

De Participio.

participiū.

Participium est pars orationis, quæ partem capit à nomine, partem à uerbo, partem ab utroq; . Capit enim à nomine genera & casus: à uerbo significationem triplex par & tempus: ab utroque numerum & personam.

participij genus

Significatio siue genus participiorum est triplex, Actiuum, ut amans. Passiuum, ut amandus . Neutrum, ut sedens, profectus. Tempora participiorū sunt tria, præteritum, præsens, præteritum & futurū. Actiuæ significationis tempora sunt tria, Præsens in ns, ut amans: Futurum in rus, ut amaturus, & in deponentibus actiuis præteritum in tus, uel in sus, ut locutus, orsus . Passiuæ significationis sunt itidem tria, præsens & futurum una uoce in dus, ut amandus, præteritum in tus, uel in sus, uel xus, ut amatus, latus, flexus : Neutorum uerò tria, præsens, & sedens: futurum, ut sessurus, & in neutris deponentibus etiam præteritum, ut profectus. Huius formæ ab actiuis, uel neutris etiam non deponentibus notantur quedam, Ausus, gausus, fesus, solitus, præterea cœnatus & pertæsgressiua sus, quorum uerba ueteres Trāsgressiua uocarunt, postea utro passiores Neutro passiuia. Talia sunt & licitum, libitū, placitum, & complacitum.

præsens passiuum par

De præsentis passiuo, quoniam id Grammatici uidentur adhuc non admittere, ueniam dabit lector, si paulò pluribus agam, quò res controuersa, sit necne Latinis huiusmodi participium, semel decidatur. In quo mihi Laurentij authoritas (uiri de lingua Romana nō minus propè dixerim

T H E *T. M.*
S O L L I C I T O R.

Exactly and plainly declaring,
**Both as to KNOWLEDGE and
PRACTICE, how such an Un-
dertaker ought to be qualified.**

As also,
**His Parts, Qualities, and fitting Endow-
ments for such a weighty Employment.**
**In a more special manner then hath ever been
heretofore published by any hand whatsoever.**

Shewing further the particular
Of Suing a Person Priviledged;
**And how the same may by course of
Court sue any Forrainer.**

**Being truly useful for all sorts of persons who
have any important Business in Law or Equity.**

**By T. M. Esq; twelve years a Practitioner, and
now of the Middle-Temple London.**

Hor.

*Si quid novisti rectius istis
Candidus, imperti, si non, his utere mecum.*

London, Printed by J. C. for Hen. Maysh, at the Princes
Arms in Chancery-lane. 1663.

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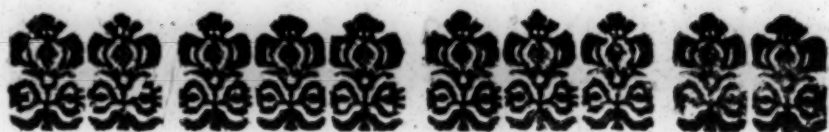
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To the Honourable,
Sir HENEAGE FINCH,
Knight and Baronet,
His Majesties Sollicitor-General.



Mong the several varieties produced by this Age, wherein almost every man endeavour-eth in his own way the management of his particular Affair, I come, *Athenian*-like, with an *Aliquid novi* (as I suppose) in my hand. I cannot be so vain to imagine that there is any Circle, Star, or Meteor in the Sphere of the Law, but what you are exquisitely able to make the world know you can take

The Epistle Dedicatory.

the height of, and to discover its proper or Eccentric Motion. To the candor therefore of so great and learned a Judgement, I could not but offer this small Essay : which though in it self not able to draw aside your eye to glance on it, yet happily to the generality it may prove in some measure helpful and advantageous. And though the meanness of the gift may not merit your acceptance, yet your goodness I hope will over-balance the same ; and thereby give encouragement to him who desires to approve himself,

S I R,

Mid. Temp.

Nov. 20.

1662.

An Honourer of your

Name and Vertues,

THO. MANLEY.

To



To the R E A D E R.

THe desire of publick benefit will no doubt so readily appear in the very Frontispice, that it will save an unnecessary labour of boasting of this endeavour, or complementing your acceptance. Things of this nature affect not any dress or preparatory shews, as not beholding to any Ornament for the commendation of their use, which answers the accessional Fancies of Language. Practice and the plodding head is the subject of this Treatise; to which Fancy, and other polite Curiosities, are very incompetent Auxiliaries: yet will you finde a tincture and accost of such pleasing delight, even in the short turns and inobservant Dispatches of this our Solicitor, which may tell you the Book was painfully laboured to accommodate it self to his most express Character. All I shall add is this, that it may be confidently presumed that the frequent abuses and miscarriages in this Employment will both be rectified, wilful Delinquents terrified, the Clyent
certi-

To the Reader.

certified, and such an unerring Reputation obtained, that the Law shall recover and maintain its honour free from the affronts and injuries of ignorance and impudence; Justice will be triumphant, and the Clyent finde the benefit of them both with ease, assurance and expedition.

Vale.

By some inadvertency of the Press, the manner and method of suing any Courtier, or other protected person, having been omitted, it is added at the end by way of Appendix.

Courteous

Courteous Reader, these Books following, with others, are sold by Henry Marsh at the Princes Arms in Chancery Lane.

A New English Grammar, prescribing certain Rules for Foreigners to learn English: with a Grammar of the *Spanish* or *Castilian* Tongue, with special Remarks upon the *Portugees* Dialect, &c. to which is annexed, a Perambulation of *Spain* and *Portugal*, which may serve for Direction to travel through both Countries: for the Service of Her Majesty, whom God preserve. 8.

The Life of that reverend Divine and learned Historian Dr. *Tho. Fuller*. 8.

The History of Independency compleat; being the first, second, third, fourth and last part, which may be had single by such as have bought the other. 4.

Considerations upon the Act of Uniformity, with an Expedient for the satisfaction of the Clergy in the Province of *Canterbury*: by a servant of the God of Peace. 4.

The Compleat Attourney: fifth and last Edition. 8.

A new discovery of the French Disease, and Running of the Reins, their causes, signs; with plain and easie directions for perfect curing the same: the second Edition, by R. *Bunworth* Doctor in Physick. 8.

English Lovers, or a Girl worth Gold: both parts, so often acted with general applause, now newly formed into a Romance, by the accurate pen of J. D. Gent. 8.

Don Juan Lamberto, or a Comical History of the late times: in two parts, by *Montelion* Knight of the Oracle, &c. 4.

The

The Rump, or an exact collection of the choicest Poems and Songs relating to the late times, by the most eminent Wits, from Anno 1639. to Anno 1661. 8.

Fragmenta Aulica, or Court and State Jests, in noble Drollery, true and real, ascertained to their times, places, and persons, by T. S. Gent. 12.

Studii Legalis ratio, or directions for the Study of the Law, under these following heads:

Qualifications for the Study.
The { Nature
Means
Method } of the Study.
Time &
Place }

by W. P.

The glories and magnificent Triumphs of the blessed Restoration of his sacred Majesty K. Charles 2. from his arrival in Holland 16⁵⁹/₆₀ till this present; comprizing all the Honours and Grandeurs done to, and conferred by him; by J. Heath, Gent. 8.

The Wits, or Sport upon Sport, in select pieces of Drollery, digested into Scenes by way of Dialogue. Together with variety of Humours of several Nations, fitted for the pleasure and content of all persons, either in Court, City, Country, or Camp. The like never before published. 8.

Four choice Sermons preached in Oxford:

- 1 Christians excellency, upon *Mat. 5. 47.*
- 2 Truth begets Enmity, upon *Gal. 4. 16.*
- 3 A Nations happiness is a good King, *Eccl. 10. 17.*
- 4 The praise of Charity, upon *Heb. 13. 16.*
by J. Price. M.A. &c. 8.

The Solicitor.


THE



The Compleat
SOLLICITOR.

CHAP. I.

Of the carriage and demeanour of a Sollicitor.

An is not born to live with his arms across; but rather, as one of the most necessary members of this beautiful frame of the world, he must confer and contribute his whole travel and pain to the conduction and conservation of that civil society in which he is placed; not onely to the good of himself, but of others also. But because that in the choice which men make of a Calling, their happiness in the managery thereof doth depend; and that nothing so
B much

much avails to the leading a contented life, as when they finde themselves fit for the same; they ought before all other things to take a tryal of their own strength, and seriously bethink themselves of that charge they are about to embrace; because usually we presume too much upon our own strength, and attempt more then our ability is fit to atchieve: and this errour we see is incident almost to all our actions. Hence it is, that some will spend more then their estates may well bear; others, in labouring and toying, go beyond their abilities: some are not masters of their passions; others there are, that in dalliance and sporting waste their time: and another sort there are, who are so vehemently satyricall, that they will not spare any person, no not the Prince, although thereby they incur the hazard and penalty of loosing their heads. Some are unapt to manage publick affairs, as being of a sullen and solitary humour, or of a slack and slow disposition; and others as unfit for all employment as any of the aforementioned, for that they be either obstinate in opinion, or discourteous and boorish in their behaviour and carriage. And that which maketh

us to fall into these faults, is, for that we do not thoroughly see and look into our selves. Whence it cometh to pass, that thus neglecting to take a true tryal of our own towardness and strength, we do often undertake businesses of such gravity and weight, as that afterwards we must either abandon them with ignorance and shame, or else to go on with them, we must needs suffer much grief, pain and displeasure.

Now that a man may the more warily weigh an affair before he put his hand to the plough, (as we say) or his back to the burthen, let him remember that the bearer must always have more pith then the burthen: for if it be too great or too heavy, who seeth not but that the undertaker should be constrained either to leave it, or else to sink and fall under it, ere it be long? It behooveth us also to consider, that there are divers kinds of affairs; some whereof are hard, uneasie and difficult; not so much for that they be weighty and important of themselves, as for that they be matched and mingled with a multitude of other toylsome and troublesome businesses which continually attend and wait upon them. I speak not this to dismay or so to discourage

any man, as to make him decline and eschew the undertaking of necessary and needful employments, (such as is this of our Solicitor) because of the many encumbrances and cares wherewith they may be accompanied; so that not daring to intermeddle with any matter of moment, he should abide without business: but this is my whole intent and meaning, that seeing a mans life is naturally subject to pains, troubles and cares, it behooveth a man so wisely and warily to demean himself, that if it be his fortune to undertake the managing of any business, he neither be so feeble-hearted as to shun or relinquish them for their difficulty, nor yet so fool-hardy as to undertake such affairs as go beyond the reach of his ability. It behooveth therefore diligently to consider every undertaking; for, for want thereof, many have fallen into such kinde of employments as have been painful for them to bear, and yet more uneasie to be abandoned: which being a case of so great difficulty, doth require both much prudence and patience; the two onely proper remedies to lighten and ease an evil: with which two vertues, our Solicitor ought in an especial manner

to be endued, as being to encounter a hard and difficult study to gain the knowledge of the Law in some reasonable measure, before he can, or rather ought, to be admitted to the practick part; which as it hath in it something of gain and profit, so hath it also its extraordinary toyle and labour; which, its true, at the first seemeth very irksome and tedious, but by continual usage becomes even as a natural habit. Just like poor prisoners, who suffer with great pains and torment at first the weight of the fetters that are put upon their legs; but after they are once accustomed thereto, necessity teacheth them, by the constant wearing thereof, not to think the same so burdensome. By which it appears, there is no manner of life, how strict, hard and laborious soever it be, which hath not some kinde of solace and refreshment, one or other, to sweeten the same. And truly there is not any one thing wherein Nature hath so much favoured mankinde, as this, that she maketh us find the remedy and mitigations of our misfortunes, cares, toyle and labour, even in the very sufferance and undergoing of the same.

The case then so standing as it doth, that

man is born obnoxious and subject unto all manner of miseries, and that his whole life is nothing but a servitude, wherein every one ought to take good heed how to demean himself in his Calling, and how he may content himself therein, winking at that which is evil in it, and applying himself to that which is good: for there is no Calling (as I said before) howsoever painful and toylsome it be, wherein the patient soul doth not finde some contentment and gain, though that cunning and skill be more exquisite in time of adversity then of prosperity: for whenas difficulties do present themselves, then must we gather all the forces of our wits together, and set our whole vigour and vertue against such eminent and present evils.

Moreover, Envy and Ambition are the two Cankers that corrupt all that are once tainted therewith, and blear the eyes, so that they cannot see to perform their duty aright, and as they ought to do. And therefore our Solicitor must not bear envy against such as are in higher place then himself, but ought to content himself in his proper station. For it is a main step to attain both practice, love and preferment, when

when he does prudently and discreetly carry himself in that estate and Calling which he hath made choice of, taking patiently the evils that fall out therein, and endeavouring to redress such accidents as cross his desires. And for this cause *Plato* did compare the life of man to the play at Dice, whereat whosoever doth play, ought always to strive to have a fair throw, and yet should content himself with any cast that cometh. The want of this satisfaction, maketh men of weak wit, upon the fortunate success of any business, so to be elated and transported, that they scarcely know what they do; they grow so insolent, that no man can keep them company; they can abide no body, and no body can abide them: but if either by neglect, want of management, disfavour, or ill fortune, they are crossed in their designs, (though never so contrary to reason) they are so enraged or amazed, that you shall see them like unto one sick of a long and languishing disease, which can neither abide heat nor cold.

The Philosopher *Theodorus* was wont to say, that he gave his Scholars instructions and lessons with the right hand, but that

they received them with the left. And so doth it fare oftentimes not with a few, who with the left hand take hold of the luck which Providence reacheth to them with the right. It were much better, in my judgement, discreetly to imitate the wise diligence of the Bees; which of Thyme, that is but a dry and harsh herb, extract and confect sweet and pleasant honey: so should every man in his station, out of the troubles and sollicitudes of his life, draw whatever is good therein; and in the mean time, chase away what is evil, or so case and cover it, that it may not be discerned. And who knoweth not but that such as exercise themselves in the actions of vertue, can by a secret and supernatural kinde of Alchimy, draw good out of evil? *Dio- genes* was banished; but he made good use of his banishment, in that he did in the mean time betake himself unto the study of wisdom. And this shall not be so difficult and hard to do, as it seemeth to be, if by frequent exercise he do endeavour to acquire the habitude and setled custome of living content in his condition. Can ye not abide in the houses of Princes or great men? Content you then with your own. Do ye
finde

finde your self incapale to govern, or sit at the helm in the Commonwealth? Play then the good Citizens part, and be content to obey: for it is expedient that he that will undertake to be a Solicitor in every way compleat, must hold and keep a certain stayed and settled manner of living, and must not vary and change with every winde. Ye may see many much subject to this vice (for so I must call it) of changing their manner of living from day to day, so that they cannot ground or settle themselves upon any thing whatsoever. They appear like *Proteus*, never long in a shape: *modo Causidicum*, *modo Rhetora*, as the Poet speaks; wherein they resemble such as have never been accustomed to the Sea, who as soon as they begin to sayle, run out of one vessel into another, leaving the bigger to put themselves into a lesser, and by leaving the lesser to return to the bigger again. And thus they continue in changing, until what time they know clearly that nothing can fit them, because that whithersoever they go, their queazy stomachs do still keep them company, and consequently their vomiting disease.

Likewise those that bring their passions with

with them unto their affairs, do seek incessantly after a new manner of living, and never accomplish what they have once begun. All things go against their stomachs, all things displease them; whether to be idle, or to be employed; to serve, or to command; to be married, or to be single; to have children, or to have none at all: finally, nothing doth fit their fancy, nothing doth satisfie their desire, save onely that which they have not: and such me thinks must needs live miserably and restlessly, as prisoners fettered in perpetual pain.

There is likewise another manner of men not much unlike the former, that cannot keep themselves quiet, nor be at any settlement, in any time, or in any place. They cease not to go and to come; always intermeddling with affairs, without being thereunto called; and busying and bestirring themselves about that which in no wise concerneth them. These men when they go out of doors, they run along the streets; they haunt the publick places, and then they return home full of vexation and weariness, without any designe: for there is nothing that doth so much irk and weary mens minds, as to labour in vain. They
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are like unto the little Ants, which do creep upwards upon trees; and after they have mounted up to the top, have but the pains to creep down again the same way that they went up, without bringing down with them any good at all. Many live in this manner, whose life is nothing else but a boyling leifure, full of tumults and toyls. Ye shall see them posting on with such vehemency and speed, as if they would carry away with them all that they finde before them. The publick places, the Churches and Markets, are ordinarily full of such folks. These be they which forge and frame news at pleasure: They will be scanners of all mens worths, and the givers of garlands: They will talk lavishly of other mens lives, and discourse of other mens offices. But the actions of a well-advised man, (such as a compleat Solicitor ought to be) tend alwayes to some certain end; neither doth he burthen himself with more busineses then he can with conveniency turn his hand to, and put in execution: according to that of Cicero, *Omnis Cogitatio motusq; animi aut in consiliis capiendis de rebus honestis, & pertinentibus ad bene beateq; vivendum, aut in studiis scientiæ cognitionisq; versabitur; Omnes*

Omnes enim trahimur & ducimur ad cognitionis scientiæ cupiditatem: in qua excellere pulchrum putamus; labi autem, & errare, nescire, decipi, & malum & turpe ducimus. That is: "Every thought and motion of the minde ought to be employed either in consulting of honest things, and such as may lead to a good and happy life; or in the study of Arts and Sciences, and the way to gain knowledge: for we are all drawn, or, as it were, led by the hand to a desire of getting knowledge, and bettering our understanding: wherein to excel, is accounted an excellent thing; but to stray, deviate, be ignorant, and easie to be deceived, not onely by others, but also by our selves, is counted a great stain to reputation.

CHAP.

CHAP. II.

Of the qualities wherewith a Solicitor ought to be endued, to make him compleat.

THe former Chapter having treated in general of the necessitie of knowledge to be sought and acquired by all men, we shall in this now descend to particularize the qualities wherewith every one ought to be endued that intends to take on him the business of Solicitation. To which purpose we shall observe five things :

First, he ought to have a good natural wit.

Secondly, that wit must be refined by education.

Thirdly, that education must be perfected by learning and experience.

Fourthly, and lest learning should too much elate him, it must be balanced by discretion. And,

Fifthly, to manifest all those former parts, it is requisite that he have a voluble and free tongue to utter and declare his conceipts.

First,

First, he ought to have a good natural wit, not too slow nor too quick. Not too slow: for men of slow capacity are for such weighty undertakings altogether unfit; their conceit being so tough, that neither the rules of learning, nor precepts of wisdom, nor habit of vertue, can make any impression. *Tardis mentibus virtus non committitur*, saith Cicero; for their dulness is an enemy to wisdom, and their slowness hurtful to the moments of occasion.

Some I have heard of, I confess, that in their choice of one to manage their affairs, have elected a man of this disposition; surely *contemptu magis quam gratia*: for I see no ground to allow their opinion, since those ought to be preferred who are good, and know why they are so; whereas these simple wits are easily both altered and deceived.

And as they should not herein be too slow, so neither should their wit be too pregnant and sharp, lest it become like a razor, whose edge the keener it is, the sooner it is rebated; or like soft wood, which is ready to receive the impress of the Limner, but in regard of its warping, is unable to keep it, and therefore is not fit for any
worthy

worthy portraiture. Men of this disposition are of a more quick then sound concept, in all their actions unstayed and fickle: one while embracing an opinion, as seeming the best; then again looking more nearly, and not able to answer the doubts which are ready to enter an open invention, fall to a strange kinde of uncertainty. In their negotiating of business, they decree that of other mens proceeding, which in their own case they would do: and in this security are oftentimes so over-reached by their adversary, that they cannot return without great disadvantage and loss. Commonly they follow rather subtile then wise counsels; which for the most part do not speed, being onely *prima specie lata*, things of appearance, and no substance, *tractu dura*: for by how much the subtilty is greater, by so much it is necessary that the handling be very curious and exact, else they sort to no end; being like a Clock, which most artificially composed, is soonest disordered, and put out of frame: and then they are *Eventu tristia*, so odious and unfavoured, that they are always waited on by a sinister success. And therefore wit may in this case be said to resemble the Sun,

Sun, which so long as his beams wander abroad, and disperse according to their natural liberty, doth gently warm and cheer the earth; but when they are by a violent reduction contracted and drawn together in the hollow of a burning-glass, consumeth that onely should be refreshed. In brief, then such should and must be the wit that is fit to negotiate affairs, whose over-pregnancy must be tempered with a measure of solidity; by which means becoming *astutus similis*, they dispatch their business with much moderation. And with such a wit our Sollicitor being endued, will even in the execution perceive, and upon present occasion determine and take counsel: as Fencers do in the Lists, whom the countenance of the adversary, the bending of his body, and the moving of his hands, doth admonish how to proportion the distance, how to offend where is least ward, and how to defend where there is likely to be made the strongest assault.

2. But it is not enough for our Sollicitor to have such a wit, unless the same be further refined by education. Now education (as the Philosopher speaks) is a good and continual meaning of the minde: this
being

being indeed the principal foundation of all humane happiness, and as the formal cause of our life; so this is the efficient both of a clear understanding, and so consequently of a good life: without which, men are burthens and eye-sores to the Commonweal; nothing but a cypher. — *Et fruges consumere nati.* Now Education may be atchieved as well by association as inculcation: for good company is like a wholesome Air: a man may profit much even by the changeable interview of a good man. This is a thing of very great consequence in young minds, according to that of the Poet, *Quo semel est imbuta recens servabit odorem — Testa diu* — They are apt to be seasoned either with good or bad resolutions, and to receive the impress of any custome, which their first company shall by the silent perswasions of their actions impose upon them. So then, though company is a great matter, and will prevail much; yet evil customes may be deleted, at least altered or amended by inculcation; which must not be done with terms of affected indignation, but in a more moderate way, mixing reprehensions with fair perswasions, and laying before the eyes of

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their

their understanding the generous examples of several persons: so by recording their tractable and officious dutifulness, to enflame them to imitate and surpass them.

3. Having thus both by precept and example received the benefit of Education towards the refining of his natural wit, it is in the next place necessary that our Solicitor should be perfected by Learning. Now although Learning have a private and pleasing end in it self, as being the harbour where the free and untroubled consideration hath a delightful repose from the Sea of more unquiet thoughts; yet is it but a serving quality, preparing the minde to a nobler end of well-doing: for Knowledge or Learning teacheth not her own use, but as a necessary mean enableth us to good actions: and it ought to be measured by Vertue; and if loved for any thing, it must be because it informeth us to do virtuously. It is an excellent Commendation that Pliny giveth to Trajan, *Prestas quaecunq; tibi precipiunt, tantumq; eas literas diligis, quantum ab illis probaris.* We must use the precepts of Learning as the Laws of our behaviour: we must remember that the glory and encrease of Knowledge

ledge consists in the exercising of good acts; and the masculine and active power of the minde must be joyned thereto, to make us perform good and great things. But as it is to be followed, so it is not to be embraced with too vehement fervency: but let that saying of *Cato* be remembered, "That
"active mindes cannot be with a more honest idleness, then the study of letters
"corrupted; nor idleness by any greater
"or more dangerous policy finde easie
"entertainment in a well-governed Commonwealth.

This Learning will at length teach to lay hold on another most excellent branch of her self, which is, Experience: and indeed it is the most entire part of Learning, without which, the most absolute Scholars and learnedest men cannot attain to any degree of perfection in civil actions. For there is more of certainty in the principles of practice, then in the most necessary demonstrations or clearest discourses of reason. And these men that are intendants, (as our Solicitor ought to be) and practiced in the Occurrents of Courts, are fitter for any active employment, and can with better easiness dispatch any business:

Quoniam enim habent oculum ab ipsa experientia, vident ipsum principium. These become as it were trusty Oracles, on whose judgement a man may safely repose his whole fortunes: they are on earth, *instar præsciorum numinum*; whose advice a man ought to take, before he engage himself in any action.

For the mean by which wisdom enableth to foresee a success, and accordingly after due Consideration rule the present, is Conjecture; which by comparing things passed, presupposeth out of the same causes the same effects. Now in this obscure and incertain deliberation upon the future, our Solicitor being experienced, is like him, who having tryed a dangerous passage in his own person, and noted the by-turnings which might divert him into an error, can in the darkest night with a secure and forward alacrity go the same; and overcoming all difficulties, arrive at the appointed place: whereas another, though furnished with the soundest directions, (yet never having proved it) quaketh at every shadow; and having his spirits shut up in amazement, plainly hazardeth his person. Now the rules to perfect this experience

perience in our Solicitor; are, to frequent the Courts of Justice, as Free-schools of civil Learning; to endeavour to understand all Occurrences therein; to confer thereof with men expert, real, of a deep insight, such as are not carried away with apparences, but *Can spy day at a little hole*, (as the Proverb speaks) and make judgement out of matters themselves, and discern between truth, and truths likeness, and know when covert designs are the foys of more eminent intentions.

4. And now our Solicitor being thus forward toward perfection, lest he should be too much elated and puffed up, all those his foregoing parts must be balanced and kept even, by the unhyassed Rules of a sound judgement and solid discretion, which should be the balance in which he should weigh all his actions.

The first part hereof is Deliberation; in which he must neither resolve with haste nor affection: the one not giving time enough to discuss those things which ought to be considered; the other so occupying the minde, that no thought can creep in, which doth not in all regards conform it self to give sufferance to that passion. He

must promise himself nothing, before his Conceptions are by great presumptions assured of success: for the fervency of hope maketh men somewhat more retchlessly negligent; insomuch that when they are disappointed, they are as impatiently grieved, as if they had fallen from an essential felicity. Like Novice-Merchants, who fore-counting great gains, and failing of their fresh expectation, are suddenly embarked in that irrecoverable mischief of debt.

Another point of discretion which he ought to make use of, is, *Principiis obstare*, to provide at the beginning, and not linger till he be surprized both in his business and judgement; and what he cannot compass at the first, it is best by timing and waiting to expect an opportunity: for often, things by time receive contrary revolutions, and conclude clean different from their appearance and likelihood. And although he may sometimes wait long, yet he must continue in action, and managing of the matter: so may new businesses arise out of the former, both by reason of the coherency and way that opens one to another. Herein must be observed that of *Cicero*; he must

non solum animis, sed etiam oculis servire civium: he must not think himself discharged, except he accompany his actions with fair likelyhoods. This, if it be not affected, sets a splendour, and gives a grace to our actions; teaching us to put a difference in persons, and with divers natures to treat diversly, applying to every mans humour.

Some men are so incapable, that they make small things great, easie businesses impossible; and enterprize nothing which through their perverseness is not with difficulty accomplished: whose folly a man may compare to the unskillfulness of some Chyrurgeons, who in stead of healing, fester a wound; and in stead of mitigation, make the torments more grievously dangerous: whereas expert ones do with gentle Lenitives redress the malady, before the Patient have any thorow sense or feeling of pain. So our Solicitor being thus guided by discretion, and having his spirit awaked to all circumstances, doth manage matters with a more delicate deportment; and by certain premised Preparatives, so disposeth the minde of the other agent, as it may be apt to receive any form which shall be im-

posed : using the same Consideration which good Players at Tennis have , who not to suffer a rest , do not onely stand attentive to send it to their Companion, but with like heed provide to retake it, by accommodating their person , and expecting it in the likelyest place : so he , to avoid all hinderances , doth not onely suit his own words, but also gives favourable Constructions to the speeches of the other Agent, by dissembling the discontentments which might arise. In brief, some few other Rules for our Solicitors discretion , may be these : He must avoid sudden changes, for that doth hold of violence ; and *nullum violentum est diuturnum*. Again , he must settle more assurance in him that doth expect , then in him who hath received a benefit : for by speeding in suits , men become slack waiters ; when hope of gaining will certainly keep them in due devotion. He must also be wisely diffident , and put on a judicial distrust : put on, I say , because there is nothing less familiar and easie to honest men, then to suspect warily.

Having thus far trained him up in the way to perfection , and laid him down some

some few Rules to walk by, come we now in the last place to shew how,

5. He shall manifest the same, and comment on his actions. To which purpose it is necessary that he have a free and volatile tongue to utter and declare his conceits: in the use whereof, it is necessary that he avoid affectation, and that his speech be honest, comely, significant, expressive, proper, and void of all fear and effeminate terms, without any dissimulation: for doubtful and ambiguous words, with particular reserves, argue a base mind, and imbecility of spirit. He must not always shew himself a Scholar, but sparingly, and when fit occasion requires it: for sometimes to use conceits of Learning as Embroideries, is requisite; but then it should be in an hidden manner, like as apparel doth represent the proportion, but not the barrenness of our members: but generally it is the greatest wisdom rather to attend others, then to be an eloquent Merchant of self-conceits: for men expert and practiced, can out of anothers mans words deduce great consequences, and take light of matters of great importance.

With these five Qualities so rectified as
afore-

aforesaid, our Solicitor being rightly adorned, he shall be able with credit to run through all the hazards and difficulties which in his practice he shall or may meet with.

Object. But here I meet with an *Objection*, viz. *What need is there of all this coyle and ado about a Solicitor?* Do not all men know there are many Solicitors who have much practice and great dealing, that have never been bred to any of those things? simple fellows, who had not wit or honesty enough to learn a mean Trade, and in truth cannot write their own Names, and yet are accounted brave fellows in that business?

Answer. To this, I answer: True, it is, and to the shame both of the Law and the Professors thereof be it spoken, that will suffer such fellows by their ignorance and deceits to abuse so many as they dayly do. 'Tis by the means of these cheating devouring Caterpillers, that the honourable Professors of the Law are so often cryed out upon for bribing and taking excessive Fees; and it will be no wonder hereafter if *Ignoramus* be revived, when such a company of simple Sots shall be admitted or suffered to usurp (and therein abuse and make vile) the

the worthy name of a Lawyer. It is an abuse well worthy to be inspected by the discerning eyes of the learned Judges of the Land, and some severe course to be taken for the remedy thereof; whereof under favour and permission, I shall make bold onely of one small hint, as follows.

Whereas now every idle fellow, whose prodigality and ill husbandry hath forced him out of his trade or employment, takes upon him to be a Solicitor; and thereby not onely by their multitudes and swarming in every corner, they who have been at great labour, expence and study, either can have no practice at all, or at best so little that it is not worthy their looking after; and not onely so, but the Clyent also receives a double damage; first, in the tedious delay, and sometimes the loss of his cause; and then in the vast expence of his money, whereof he can have no account: for remedy whereof, it would be well that it should be declared, That no man should dare to undertake to be a Solicitor, either at Common Law or in Equity, unless he had for five years before at least been of some of the Inns of Court, or Inns of Chancery, and shall be legally admitted
and

and entred in a Roll for that purpose, to be kept in the Pettybag-Office in Chancery, under a certain pain and punishment; and that no Clyent do entertain any other then one so qualified: by which means, if any abuse be offered, the Court may take a Cognizance thereof, and punish the same. This shall suffice to have spoken in answer to that Objection: I shall now proceed, and shew the duty of our Solicitor, both in what he ought to do, and what he ought to know. But for that, I shall refer you to the next and following Chapters.

CHAP.

CHAP. III.

*What our Solicitor ought to know, the better
to enable him in his practice.*

AS we suppose our Solicitor to be chiefly if not wholly concerned in matters of Equity; so we shall to that purpose inform him, that he must of necessity be knowing in Courts of Equity: whereof the Chancery in this Kingdome being indeed the chief and onely lawful Court, if so be that he be truly instructed therein, it will be sufficient to guide him in all the rest. Therefore

In this Court the Lord Chancellor of *England* is the chief Judge; who in case of sickness, infirmity, or other extraordinary business, may depute one of the Judges to sit in his place at any time: but in the Terms, the Master of the Rolls is equal with him, and sitteth at *Westminster-hall* in the mornings; and three days in every week, during the continuance of the Terms, sitteth alone, assisted by two Masters of the Chancery, in the Chappel of the Rolls: and these in
their

their several places, in manner aforesaid, do make Orders and Decrees.

The subordinate Officers of this Court are many.

The twelve Masters in ordinary, which are Assistants both to the Lord-Chancellor and Master of the Rolls, as aforesaid, and sit with them; and to whom References are made, and before whom Deeds and Recognizances are acknowledged, and Affidavits made. This formerly might have been done before any Master at his own house, by the option of the party concerned: but now, by an Act of Parliament made in the thirteenth year of King *Charles* the second's reign, there is a general Office erected for the said Masters, wherein there are at certain hours every day, at least two Masters attending to dispatch the said business; which may not be done otherwise, or other where, but by special Order.

The Register of the Court, who hath divers under him that sit in Court, and take notice of all Orders and Decrees made in Court, either before the Chancellor or Master of the Rolls; and accordingly afterwards

wards, at the request of the party concerned, or his Sollicitor, draw up those Orders and Decrees: which are afterwards to be entred in the said Office, in a Book of Entryes to that purpose kept; and being so entred, they must be returned to the Register; who having set his hand thereto, the same thenceforth are authentick, and may not be altered without especial order from the Court. In this Office also are filed all Reports from the Masters, and all exceptions taken to any of the same Reports.

The six Clerks, in whose Office all proceedings upon Bill and Answer, unto the very Decree, yea and after Decree, are acted; and from whom likewise issue some Patents, as for pardon of a man for Chance-medley, Patents for Embassadors, Commissions for Bankrupts: and these are done by their sitting Clerks, of which each Six Clerk keeps a set number.

The Curfitors of the Court, who were incorporated by *Queen Elizabeth*, by the name of the Twenty four Curfitors, amongst whom all the business that lies in the severall Shires is severally distributed. These make all Original Writs in the Chancery,

Chancery, which are returnable in the Common Pleas; and all Writs of Entry, and Covenants.

The Masters of the *Subpana*-Office, the Clerk of the Affidavits, where all Affidavits are to be filed which you would use in Court. Heretofore they used them in Court, and after filed them; but now they must be first filed, and a Copy thereof taken to be read in Court, or else they signifie nothing.

The Clerks of the Petty-bag, who have many Clerks under them; and these Clerks have much variety of business that comes through their hands, and requires very much knowledge and experience for the managing thereof: for this Office hath the making out of all Writs of Summons to the Parliament. To this Office are all Offices that are found *post mortem*, brought to be filed. In this Office are all Pleadings of the Chancery concerning the validity of any Patent, or other thing whatsoever that passeth the Great Seal. And these Pleadings are all in Latine, although most of the rest of their Proceeds were in English. If any question arise about the acknowledgement of any private Deed between
tween

ween Subjects, which is acknowledged in Chancery before the Lord Chancellor or Master of the Rolls, or any of the Masters in Chancery; and all Statutes and Recognizances taken before any Officers to that purpose deputed, are transmitted hither, and here prosecuted. Here also are all suits for or against any person privileged in the Court. And lastly, it is a hand whereby to transmit divers things from the riding Clerk and the Inrolment-Office, to the Chappel of the Rolls.

The Examiners are Officers of this Court, who take the Depositions of Witnesses, and are to examine them, and to make out Copies of the Depositions.

There are likewise Clerks of the Rolls, who sit constantly in the Rolls to make searches for Deeds, Offices, &c. and to make out Copies thereof.

The Usher of the Court hath the receiving and custody of all monies ordered to be deposited in Court, and maketh Certificates thereof, and payeth the same back again by order of the Court, and not otherwise.

The Serjeant at Arms, who carrieth the Mace before the Lord Chancellor; to him

all persons standing in high contempt are brought up by his Substitutes as prisoners.

The Warden of the Fleet likewise is bound to attend this Court, to receive such prisoners as stand committed by the Court to him.

The Court consists of a double power, ordinary and extraordinary: the ordinary power is (as in the cases of *Scire facias*) to repeal Patents in case of Traverse, Endowment of a Woman, and the like: and here in the Court is limited and confined to the Rules used in the Common Law. The other is extraordinary and unlimited, (as in cases of Equity) wherein relief is to be had by a Suit here by way of Bill and Answer.

By the power of this Court are issued forth Commissions for charitable Uses, Bankrupts and Sewers. In some cases Commissions have been here granted to examine Wastes, to set out meet ways for Passages, to prove a Childs legitimate, to prove Customes, and to examine Witnesses *in perpetuam rei memoriam*.

It proceeds by way of Bill and Answer, and gives relief in many cases besides and beyond

beyond the Rules of the Common Law: whereof practice will shew many experiments. And to this purpose it is necessary for our Solicitor to read *Tothills* and *Caryes* Reports.

CHAP. IV.

Of the whole duty of our Solicitor in his practice.

HAVING in the former Chapter gone through the most necessary things which our Solicitor ought to know bare, it remains now we should come to the practick part of it; wherein we shall set down plain and easie Directions for the greatest part of their manner of proceedings; wherein for methods sake we will begin with their first Process, called a *Subpæna*.

This Writ of *Subpæna* is the leading Process of this Court, as to the procedure by Bill and Answer; and is a close Writ, and doth require the Defendants appearance in Court at a certain day, and under a certain pain therein limited, to make answer to the complaint of the Plaintiff, which is indeed the Bill: which in former times

was wont to be put in, before the *Subpœna* sued forth; but now of long time hath been otherwise used. This first *Subpœna* is called *Subpœna ad respondendum*; and is distinguished by that name, because there are several other *Subpœna*'s in order to further proceeding; as, a *Subpœna* for Costs, a *Subpœna* to make a better answer, a *Subpœna* to rejoyne, a *Subpœna* for Witnesses to testifie, a *Subpœna* to hear Judgement, and a *Subpœna ducens tecum*, for Writings, Evidences, &c. Touching the *Subpœna* to answer, you must be very careful that there be no mistake in the body of the Writ; for that may prejudice the Plaintiff; and the Defendant may take advantage thereof, if he find it: but if there be a mistake onely in the Label, no advantage can be taken by it. In none of these Writs may there at any time be put more then three names.

This Writ may be returnable two ways: either upon the common days of Return, as *die Jovis proxime post tres Michaelis*; or else upon any day certain, which now is the most usual course. And it is to be served before the Return thereof be past: and this is to be done either by the delivery of the
VVrit

Writ it self under Seal to the Defendant in person, or by shewing to him the Writ under Seal, delivering him a Note or Label of the day of his appearance. And this last course is most usual, because oftentimes there are more persons then one in the *Subpœna*, and then the body of the Writ is reserved to be left with the last. Neither indeed is it at all required to serve this Writ personally: for it hath often been declared a good service, when the VVrit or Label thereof hath onely been left at the Defendants Dwelling-house, with some relating to him, and Affidavit thereof made; otherwise no contempt can be grounded thereon. And where a Defendant doth hide himself, or refuse to be spoken with, it hath been allowed to be a good service, to leave the VVrit hanging upon the door of the house, or to put it into the house under the door, or in at the window of the house of his usual Residence. Also it is taken for a good service, although it be served on the same day it is returnable, if it be served before Noon of that day, or before the rising of the Court. VVhere a *Subpœna* is had against husband and wife, and the husband alone is served, and hath notice that

it is against him and his wife; this is a good service to both; and for want of an appearance, an attachment may be had either against the wife onely, or both. The *Subpana* being served as aforesaid, the Bill must be put in in due time, or else the Defendant will have costs: to prevent which, you must take notice what time is prefixed for the exhibiting the Bill after the return of the *Subpana*: which is thus: If the *Subpana* be returnable upon a general Return-day, as *Crastino, Octabis, Tres, Mense, &c. post, &c.* then hath the Plaintiff time to put in his Bill until the second day before Noon next following, being the fourth day following every of the said Returns; and you must account the Return-day, and the fourth day after it, for two of the said four days. But where the *Subpana* is returnable upon a certain day of the moneth, then the Bill must be filed the second day after before Dinner. And if the Bill be not filed, (the *Subpana* being returnable on a certain day of any moneth) then the Defendants appearance being entered, his Clerk in Court may prefer costs the next day after: and if the Bill come not in the next day after costs so preferred, before Noon, or

or presently after Dinner, then the Defendant is discharged with such costs as a Master of the Court shall tax him. But where the *Subpoena* is returnable on a Return day, the next day after the fourth day is costs day: and if the Bill come not in the next after the costs day, as aforesaid, (the costs being preferred the day before) then the Defendant is discharged from attendance, as aforesaid, with his costs.

Where the costs are not voluntarily paid for want of a Bill, by the Plaintiff or his Clerk, to the Defendant or his Clerk, in such case the Defendant may have a *Subpoena* for the said costs, which must be personally served on the Plaintiff: and if thereupon the costs be not yet paid, then the Defendant may (upon Affidavit made and filed that the said *Subpoena* was served) have an Attachment directed to the Sheriff of the County where the Complainant lives, to attach him for the said costs: and if the Sheriff make return upon the attachment, that the Complainant cannot be found, then a Proclamation may be sued out against him; and that also being returned with a *non est inventus*, then a Commission of Rebellion may be taken forth.

On the other side, if the Plaintiff do in due time file his Bill, and the Defendant appeareth not the next day after costs day, then the Complainant, upon Oath made that the Defendant was served with the *Subpæna*, may have an Attachment; and if the Sheriff return *non est inventus* thereon, he may sue out a Proclamation and Commission of Rebellion in manner aforesaid, successively one after another.

The Affidavit that must be made of the service of the *Subpæna*, must be made according as the manner of the service was: for if the Affidavit made do not prove a good service, as before is set forth, then no attachment can be had upon it: for there can be no attachment regularly made out against the Defendant for not appearing, until there be a certain and positive Oath made of the time, place and manner of serving the *Subpæna*, inserting therein the return of the *VVrit*.

And where any person served with a *Subpæna* doth injury or wrong either by word or deed to the party who acted in the service of it, or doth set at nought or contemn the *VVrit* it self, or the Authority of the Court from whence it issues; upon Oath

Oath made thereof; and motion thereupon, such person will be committed to the Fleet.

Where there is appearance made by the Defendant within the time limited, and the Bill also filed, in such case, upon a Rule given by the Plaintiffs Clerk to the Defendants Clerk, and the same entred into the Register, the Defendant is to answer to the Bill by the same day seven-night then next to come: which if he fail to do, and do not otherwise in that time satisfie the Court, by shewing sufficient cause of such his delay, then the Complainants Clerk may make out an Attachment against him.

Now this VVrit of Attachment cannot be duly had, unless the *Subpana* beforegoing were duly obtained: for if the *Subpana* be counterfeit, or if true, not legally served, the Attachment is irregular; and the Defendant arrested by it, upon disclosing the matter to the Court, will be discharged thereof: whereas an Attachment duly gotten, may not be discharged till the Defendant have first paid 25 s. costs; and every succeeding Process, double so much; and upon account thereof, he is discharged of course.

The

The husband appeared, and the wife not: an Attachment was granted against both. *Abells Case, 19 Eliz. Caryes Rep. 65.*

So he alone appeared, and put in a Demurrer in both their names, without excusing her: Attachment was granted against both. *Spicers Case. Caryes Rep. 39.*

The Defendant made Oath he could not answer without sight of Evidences, and had time given him, and afterwards put in a Demurrer: Attachment went out against him. *Pasch. 21 Eliz. Farmers Case.*

VVhere the Defendant is served with a *Subpoena*, and afterwards for not appearing an Attachment issue against him, if he do not appear thereon, but suffer a *Non est inventus* to be returned, there will go out Proclamation of Rebellion against him. Yet note, that the Process of Contempt, and all Attachments in Process, are to be discharged upon the Defendants payment of the ordinary costs of the Court to the Plaintiffs Clerk, or his tender thereof to the same, and his refusal to take it, and filing of the Plea, Answer or Demurrer, as the case merits, without any motion: and if the Plaintiff do prosecute the Contempt after-

afterwards, the Defendant will be discharged with costs.

VWhere an Attachment is had, if the Sheriff do not make his return, a day will be given; and if he do not by that time, the Court will set an Amerciament upon him.

VWhere any party is attached, and afterward proclaimed, and he comes not in, but stands further out in contempt, in such case a Commission of Rebellion may be issued forth against him, for the apprehending of him, and bringing him into the Fleet, (the proper Prison of this Court) and this Commission of Rebellion is sometimes directed to the Sheriff, and sometimes to private persons; as in the Case of *Cage and Etrington*, Trin. 38 Jacob. Totbil. 37. This course is likewise taken against those that perform not obedience to Orders or Decrees to pay costs, or the like.

VWhere private persons are made Commissioners, and do take the person in contempt; if they suffer him to escape, the Solicitor may by motion get them committed till they bring him in; as in the Case of *Sachevorel* against *Sachevorel*, Hill. Term, 18 Jacob. Totbil. 38.

If

If any person rescue one taken by a Commission of Rebellion, the Rescuer may be gotten to be committed. And if the Commissioners upon such a Commission let the party in contempt go where he list, whereby he make an escape, they may be procured to be committed to the Fleet till they pay the debt. See *Nelsons Case* against *Telverton* in *Trin.* 18 *Jacob. Tothil.* 39.

If a party appears not, but stands further out in contempt, a Sergeant at Arms may be sent out to take him: and if he cannot, either by reason of his hiding or resistance, or having taken him, he escape, and so persist higher in his contempt; in such case a Sequestration may be obtained upon a motion and Affidavit thereof, of his Land: and if the suit be for Land, a Sequestration and Injunction for the profits of the Land, to be delivered to the Plaintiff by the Sheriff, or other Commissioners for that purpose: as in the Case of *Boles* against *Walleg* and his wife. *Caryes Rep.* 38, 58, 105, 109.

In all these Cases it behooves a good Solicitor to be careful, watchful and diligent, that he may not slip any opportunity that may work for the advantage, benefit and behoof of his Clyent and his Cause.

SECT.

S E C T. 2.

THe next part of our Solicitors practice, is to be skilled in Bills and Answers, and the several proceedings thereupon: wherein he must observe, that the Plaintiffs Bill is in effect the same that the Declaration after an Appearance had, is, either in the Kings Bench or Common Pleas, and lays down the cause of his Complaint in Chancery, being usually such as is exempt from remedy at Common Law; and therefore they commonly insert in the Bill these words, *That the Plaintiff hath no remedy at Law*. And this Bill, by continuance of such practice, may be put in after the *Subpœna* is both taken out and served, so as it come in within the time before limited in the former Section, to prevent costs.

This Bill in Chancery, and all subsequent Pleadings and Proceedings upon it, must be succinct and short, and not stuff with repetitions of Deeds, Writings or Records, (*in hæc verba*) but the effects and substance of so much of them onely as it is pertinent and material to set down; and that in brief terms, without long and needless

less traverses of things not traversable, and without tautologies and impertinencies. Neither must it contain any matter either criminal or scandalous against the Defendant, or any other; and if it do, the Defendant may refuse to answer it, and the Plaintiff and his Counsel (whose hand is to it) may be punished for it; and any other party grieved may recover costs against such Counsel.

Where any Bill contains matter not proper for the Court to give relief in, the Bill may be gotten dismissed: and so likewise will it be, if there want Counsels hand to the Bill, or if the Counsels hand be counterfeited or disallowed.

To such a Bill rightly fitted and filed, the Defendant is to make answer; wherein many times he makes much delay: but in all cases of delay, he must upon Oath satisfy the Court of the cause of such his delay; which may be in several respects: as,

First, where the matter contained in the Bill is such, as to which he cannot give an answer direct, without conference had with some other person in the Bill named, or to whom the Bill refers.

Secondly, where the Bill chargeth the De-

Defendant with the having of Evidences or VVritings, or Goods or Chattels of the Complainants, to make discovery what they are: in such case the Evidences or VVritings, and Goods, being in the Country, and he in *London*, he may make Oath he cannot answer perfectly to the Plaintiffs Bill without sight and perusal of the Goods, Evidences or VVritings which he hath in the Country. Upon which Oath so made, the answer will be suspended till the first day of the next Term: but in these cases, the place in the Country where the parties live, Goods, Evidences or VVritings lie, must be above twenty miles from *London*: for if it be nearer, he must answer in eight days after appearance, unless further time be given by order.

There may also be Oath made by another person, either the Solicitor, his Servant, or Neighbour to the Defendant, that he is sick, and cannot travel without danger of life: and upon such an Oath, a *Declinus Potestatem* (if the Plaintiff will not consent to it) upon a motion or Petition, will be allowed to the Defendant. But heed must be taken that the Order whereby it was granted must be carefully entred
in

in the Registers Office; and the Affidavit upon which the Order is grounded, must be filed in the Affidavit-Office. Where the Defendant doth not appear; or that after he hath made his appearance, he doth not answer within the time limited him, nor sheweth any cause for the same: in such case, an Attachment is awarded against him; which must be entred in the House-book of the Six Clerks Office, and likewise in the Register-book, expressing the cause of issuing the Attachment.

VWhere there is no day given by Rule to the Defendant to answer, in such case the Defendant is at liberty to answer at any time during the Term: and where the Defendant makes default within that time to answer, then an Attachment may be sued forth against him of course, and the same with the cause thereof must be entred, as before is mentioned in the last Paragraph.

VWhere the *Subpoena* is made returnable so near the end of the Term, that there cannot be a day given to the Defendant to answer; in such case the Defendant must at his peril answer by the same day seven-night next following the day of his appearance, although

although it be out of Term: for the Chancery is said to be always open. But where the *Subpœna* is returnable on the last Return-day of the Term, then the Defendant is at liberty to appear the first Return of the Term following. But if the *Subpœna* be returnable upon a day certain, although the day be the last day of the Term, yet the Defendant is bound to appear and answer by that day seven-nights next following the said appearance.

In all Cases where the Defendant makes Oath that he cannot answer without sight of Writings, Evidences, or Goods, as aforesaid, or conference with some other person, or that he have a *Dedimus Potestatem*, and Commission to take his answer in the Country; the Defendant must at his peril procure his Answer to be put in before the day after the first costs day of the next Term following, unless it be in *Trinity-Term*; for there it may be put in the second day after the second return, or otherwise the Plaintiffs Clerk may upon his default make out an Attachment against him for not answering in time.

Where the Defendant hath a *Dedimus* granted him, if there be cause of Plea or

Demurrer found, then the Defendant ought to move or petition the Court to have a special *Dedimus Potestatem* by order to answer, plead or demur; for that the Commissioners upon an ordinary *Dedimus* have power to take and return no other things then an Answer onely.

VWhere the Defendant doth demur, or put in any just Plea that he hath to the disability of the person of the Plaintiff, or to the Jurisdiction of the Court, under the hand of learned Counsel, it will be received and filed, although the Defendant do not deliver the same in person, or by commission. And if he do not put in his Demurrer or Plea into the Paper of Pleas and Demurrers in the Register-office appointed for that purpose, within eight days after the same is put into Court, that so it may be argued before the Lord Chancellor or his Deputy, as it shall fall in course; the same being so omitted to be done, the Plea or Demurrer is over-ruled of course, and the Plaintiff may take forth a *Subpœna* to inform the Defendant to make better answer, and another for costs for the said over-ruling.

Where a man exhibits his Bill in Chancery, and dies *pendente* life, whoever hath the
the

the interest in the thing complained for, whether Heir, Executor or Administrator, they may put in a Bill of Revivor against the Defendant: or in case the Defendant die, the Plaintiff may exhibit his Bill of Revivor against the Heirs, Executors or Administrators of the Defendant.

Where a Bill is exhibited against a man and his wife, and the matter contained in the Bill wholly concerns the wife, and they both answer the Bill, and after answer the husband dies; in this case a Bill of Revivor must be brought by the Complainant against the woman, if he intend to proceed in that suit: and the reason is, for that the woman shall not be constrained to abide by that answer which she, together with her husband, or solely as wife unto the man, hath formerly made to the Complainant, for that she was at that time under coverture. And in case she survives her husband, and continues possessed or seized of the thing in controversie in *statu quo*, she may as she shall think fit, make a new answer, and shall not be bound up or concluded by that answer which she made during coverture, or solely as wife to the man: and yet if she thinks fit, she may stand to that former answer of hers,

hers, and proceed accordingly in that suit.

Where a Plaintiff exhibits his Bill against a *Femme sole*, and she appearing makes answer, and afterwards marrying becomes under coverture *pendente* life: in this case the Plaintiff may proceed against her and her husband, and shall not need any Bill of Revivor; and her husband shall be bound by that answer which she made while a *Femme sole*, for that she shall not advantage her self by her own act.

Whereas on the other side, if a *Femme sole* exhibit her Bill, and the Defendant answer thereunto, and afterwards she intermarrieth; here there can be no further proceeds by the husband and wife without a Bill of Revivor, because she hath abated her suit by her own act of marriage, of which the Defendant may take his best advantage.

Where the man and the wife exhibits a Bill whereto the Defendant answereth, afterwards the man dieth, the woman may be at her choice whether she will exhibit a new Bill, or proceed upon the Bill by her husband and her self formerly exhibited.

Where

Where there are two seized of Joynt-estates, or when they are Executors of one Will, or Obligees or Obligors, and they prefer a Bill in Chancery to which the Defendant makes answer, and after one of them dies; here the survivor may proceed in his suit against the Defendant, and shall need no Bill of Revivor.

Note, That the Bill of Revivor must pursue the first Bill exhibited: for where there is any variance between them, the Defendant may be discharged, and the Bill will be dissolved.

Where there are Administrators *durante minore etate* of an Infant, Executors in the nature of a Guardian, and they sue on the Infants behalf, and the suit depending the Infant comes to age, here it seems there needs no Bill of Revivor.

Where the Complainant hath exhibited his Bill of Revivor, and hath procured thereupon a *Subpoena* to be served, he will be upon this in the same case as the Predecessor was when the Bill accrued, unless some good cause to the contrary (as, that he is not Heir, Executor, nor hath the like interest, &c.) can by the Defendants answer be shewed.

Where a man doth willingly refuse to answer, and doth stand out all process of contempt, the Court will take the matter of the Bill *pro confesso*, and decree it accordingly. See *Totbil.* 69.

If the answer be good to common intent, the Plaintiff must reply, and prove the matter if he can, and not insist upon insufficiency of the answer.

No exception can be taken to an Answer after a Replication put in; for it is then admitted to be good: but before Replication it may be excepted against. But where it is excepted against, the causes must be shewn in writing, and delivered in to the Plaintiffs Clerk the same Term the Answer comes in, or within eight days after: and if he amend it in eight days, he shall pay no costs; otherwise he must.

Where an Answer is excepted against as insufficient, it is usually referred to a Master to consider of the exceptions, and he to certify whether it be insufficient, or not: if he certify it insufficient, then the Plaintiff may take out Process for costs, and the Defendants second Answer is not to be received till he hath paid the costs.

The first Answer being returned insufficient,

cient, the Defendant must pay forty shillings for single costs: if it be an Answer that came in by Commission, and insufficient, he must pay fifty shillings costs.

The second insufficient Answer pays three pounds, the third five pounds: and you may have a *Subpœna* both for cost, and for a better Answer.

In all cases of exceptions, the insufficiency appearing in the same exceptions are the point to be insisted on, and no new exceptions may be moved. But if the Master upon reference findes the Answer to be sufficient, and accordingly certifies it, there the Plaintiff must pay forty shillings costs.

If the exceptions to an Answer be put in after the Term, there shall be time given to answer them until the fourth day of the next Term, unless the Court hasten it.

If an Answer come in by Commission, and be not good, no new Commission will be admitted but upon Oath of inability of the person, and his payment of fifty shillings costs, as before.

Where a Cause goes to hearing upon Bill and Answer, the same must be admitted to be true in all points; and no other Evidence is to be admitted but what is matter

of Record, to which the Answer doth refer, and which is provable by the Record it self. *Caryes Rep. 78, 30.*

SECT. 3.

THe third thing necessary for a perfect Solicitor, is, to understand clearly the matter of Pleas and Demurrers: wherein he must observe, first, that a Demurrer is always where there is matter defective contained in the Bill, or where is forraign matter.

The Plea of forraign matter may be of two sorts: either where it is to the Jurisdiction of the Court, or to the disability of the person; as, where the Plaintiff is Outlawed or Excommunicate, or where there is in this or any other Court a Bill or suit depending for the same cause: or it may be that the Cause hath been formerly dismissed in this Court, or the like; or if the matter of it appear upon record, it may be put in without Oath, otherwise not. In case it be a Demurrer, it must express the cause of the Demurrer: yet other causes may be insisted on at the time of arguing thereof in Court. When if the
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Demurrer be over-ruled, the Defendant shall pay five Marks costs; and where it is allowed, the Defendant shall have no costs.

If one plead a Plea that is insufficient, and so over-ruled to be, as where it is an Outlary pleaded, and it is not a good Plea, he must pay five Marks costs.

An Outlary is not to be pleaded unless you plead the Record *Sub pede Sigilli*. Also

A Plea of Outlary, if it be in a suit for the same thing for which a man sueth to be relieved in Chancery, is not to be allowed; but otherwise it is allowed, and will be in force to hinder all the Plaintiffs proceedings till it be reversed. But when it is reversed, the Plaintiff may upon payment of twenty shillings costs, upon a new *Subpoena* served, put the Defendant to answer the same Bill.

Where the Plaintiff conceives the Plea for matter or manner naught, he may put it to the judgement of the Court.

Where a man pleads a former suit, he need not set it down with the Register, but it shall be referred to a Master to certify, (which must be done within a month upon the Plaintiffs procurement) and if the Master certify against the Plaintiff, he must pay

pay five shillings costs: if there be no report within a moneth of filing the Plea, the Bill will be dismissed of course, with seven Nobles costs.

If the Demurrer to any Bill be put in upon any slip or mistake in the Bill, the Plaintiff of course laying down to the Defendants Clerk twenty shillings for costs, may amend his Bill within eight days after the Demurrer put in, but not after that time.

If the Demurrer be admitted by the Plaintiff to be good within eight days after the filing of it, and he doth pay the Defendants Clerk in Court forty shillings costs, then the Defendant shall not need to attend his Demurrer, but the Bill shall stand dismissed of course without motion, unless both sides agree to the amendment of the same: yet such dismissal is to be no bar to a new Bill to be exhibited by the Plaintiff.

Where the Plaintiff findes sufficient cause for an Order upon the Answer, he may go to hearing thereupon without further proof, (of which there ought to be very good advice taken) in which case, he must get his Clerk to present the same in course to be set down to be heard upon Bill and Answer. But in case the Court shall not finde

finde grounds to make a Decree or final Order, the Bill shall be dismissed with costs, or the Plaintiff admitted to reply, if he deserve it, first paying down five pounds costs within four days after such hearing; else the dismissal to stand, and the conclusion of the Order upon hearing is to be penned by the Register accordingly: and then such dismissal shall be a good Plea in bar of any new Bill for the same matter.

Where a Plaintiff proceeds so far as to proof, and upon the hearing it clearly appears that the Plaintiff might have had full relief upon Bill and Answer, albeit he be relieved in the same cause, yet he shall pay costs. See more fully these things in the Collection of Orders, and *Caryes Reports*, 39, 87.

SECT. 4.

OTher things in practice necessary to be understood by our Solicitor, are, Replications, Rejoynders, and Surrejoynders. Now a Replication is the Plaintiffs speech in way of Reply to the Defendants Answer: the Rejoynder is the Defendants Answer to the Plaintiffs Replication;

cation; and the Sur-rejoynder is the second defence to the Plaintiffs Action, opposite to the Defendants Rejoynder.

1. The Replication must be short, relating to the substance of the Bill; and it must avoid superfluous and criminous matter.

2. The Replication must affirm and pursue the Bill, and confess and avoid traverse, or deny the Answer.

3. The Rejoynder that must pursue and confirm the Answer, and must sufficiently confess or avoid traverse, or deny any material part of the Replication.

4. No new matter must be put into the Replication; and so much matter onely is necessary to be there, as will avoid the matter of the Answer.

5. If upon the Answer there be so much confessed that the Plaintiff need not to draw into pleading, and prove all the points, he must see to it, and reply, and go to proof onely in those particulars in question, and necessary to be proved.

6. When the Defendant doth demur or disclaim to any Bill exhibited against him, the Plaintiff cannot reply; and if the Defendant in those cases be served with a *Subpoena ad rejuvendum*, having before made

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no other Answer, but a Demurrer or Disclaimer, as aforesaid, he shall have costs for unjust vexation.

Where the case is such, that the parties cannot come to issue by reason of some new matter disclosed in the Defendants Rejoinder that requires to be answered unto, the Plaintiff may sur-rejoyn to the Rejoinder, and the Defendant likewise to the Sur-rejoinder, if there be cause.

As for the time of the Replication to be put in after the Answer, you are to observe that the Plaintiff hath time for all that Term, and all the next Term, and until the beginning of the third Term, to put in his Replication. The next Term after the Answer is put in, the Defendant may give the Plaintiff rule to reply; and if such rule be given, and the Plaintiff reply not, costs will be given against him: but if there be no rule given, and the Plaintiff doth not reply the second Term after the Term the Answer is put in, the Bill will be dismissed with costs of course. But in case the Plaintiff doth reply, and that the Replication be in Court, the Defendant can have no costs.

Where the Complainant hath replied, the Defendant may if he will rejoyn *Gratis*,
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and force the Complainant to joyn in Commission.

Where the Plaintiff intends to go to Commission, he must serve the Defendant with a *Subpæna ad rejunendum*, before he can have Commission to examine Witnesses; and upon return of that *Subpæna*, and Oath made of the serving of it, the Plaintiff may by entring Rules, force the Defendant to rejoin and joyn in Commission, or go on to the examining Witnesses without him: for having given him seven days to rejoin, if within that time he refuse to do it, he ought not to be admitted to do it afterwards.

Where the Defendant is served with a *Subpæna ad rejunendum*, and doth not upon the Plaintiffs Clerks demand to the Defendants Clerk deliver Commissioners Names by the end of the Term wherein the *Subpæna* is returnable, there the Plaintiff may either without motion or petition give Names, and take a Commission *ex parte*. See *Caryes Rep.* 111. And this hath brought you to another branch of your Solicitors duty, viz. the manner of joyning in Commission, and executing thereof.

SECT.

SECT. 5.

IN the joyning in Commission therefore to examine Witnesses, the Complainant, according to dayly practice, first gives four Names, and then the Defendant gives four Names: now the Plaintiff or his Solicitor strikes out two of the Defendants Names, and the Defendant or his Solicitor strikes out two of the Plaintiffs names; and the other four, being on each side two, remain the Commissioners. This being done, and the Commission ready, the Plaintiff is to have the carriage thereof; and he or his Commissioners must give either in person or by Note left in writing at the place of the usual abode of the other party, fourteen days notice to him of the time and place of executing the Commission: and if there be default then made by the Plaintiff or his Commissioners in the execution thereof, he must pay the Defendant such costs as he upon his Oath shall make appear he was put to in the attending the said Commission; and the Plaintiff must renew the Commission at his own charge, and the Defendant shall have the carriage of it.

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And so on the other side shall the Plaintiff have, if the Defendant have the carriage of the Commission, and it be lost by default of his side. But where it becomes void by an error of the Clerk in making of it, the costs shall be born by him, and that side for whom it was taken out.

Where the Defendant hath the carriage of the Commission, he must give notice to the Plaintiff, as is before directed: and if such notice be not given, either all the examinations will be quashed, or otherwise the Court will grant to the other side a Commission *ex parte*.

Where there hath been Publication, there no Commission can be granted or renewed for examining Witnesses without special order.

Where a Commission hath been to examine Witnesses, without reference and certificate upon it, it cannot be discharged upon a bare petition.

Where a Commission is taken out by consent, and the one side at the speeding thereof do put in no Interrogatories, nor examine any Witnesses, (unless upon a motion, and by order of the Court) he shall never be after admitted to have a new Commission.

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Where the Defendant had Witnesses, and they being served did not appear, but make default, here a new Commission will be granted to the Defendant. See *Caryes Rep.* 91, 45. *Tatbil.* 3.

The next thing is the choice of Commissioners, and exceptions against them. First, they must be men indifferent: for the exceptions that are usually taken against them, are, that he who is named Commissioner, is of kindred, or allyed to the party for whom he is named, and so may very well be deemed to side with that party: or that he is Master to the party for whom he is named, or that he is Landlord, or of his Council, or Attorney for him, or one to whom he is indebted, or one that hath a suit with the adverse party.

The Commission being to be fate upon at the time and place appointed, the Commissioners must call the Witnesses before them; where if they appear not, an Attachment issues against them, unless it be where Witnesses are impotent, and then the Commission may be adjourned to them to examine them where they be: and usually the Witness may demand his costs before he answer.

Where Witnesses appear to be examined, the Commissioners or Examiners must examine them themselves, and not leave so weighty a business to the trust of their Clerks or others to do it. They are to hold the Witnesses to the point insisted upon. They should examine them but to one Interrogatory at a time, and not to read another to them till they have answered that first. They are to take what comes from them, in answer to what they are examined, and not upon their sight and reading all the Interrogatories, to let them set it down themselves. After they have been examined, upon better thoughts they may suffer them to amend their Examinations. They ought not either to ask idle questions besides the matter of the Interrogatories, nor set down impertinent answers. They are to set down truly in parchment their sayings; and that done, they are to set their hands to every Schedule, and send them up into Court as they are taken, with a Certificate; and if the Commissioners meet with any obstruction in the work, they must certify that also.

After the Commission is duly executed and returned up, one of them must deliver

in Court, or they must send it by one that must make Oath that he received it from one of their hands, and that it is not altered to his knowledge.

If any one of the Commissioners commit any misdemeanor about examination, the party grieved, upon Oath thereof made, may have an Attachment against him.

Where is a disagreement among the Commissioners, or where there is any other special cause that obstructs the Commission, they may have an Examiner sent down on purpose to do it. See *Caryes Rep.* 30, 31, 40, 47, 80, 81. *Tothil.* 189.

The Interrogatories to examine Witnesses, must be succinct and apt: and when Witnesses upon such Interrogatories are examined in Court, you cannot examine the same Witnesses upon putting in new Interrogatories.

Witnesses ought to be examined by Examiners in Court, (if they live in or near the Town) and not by Commissioners: for no Commission whatsoever ought to be issued out into any place within ten miles of London.

Either party, as well Plaintiff as Defendant, after answer put, until Publication

be past, may examine what Witnesses they please in Court, before one of the Examiners: but before Answer, and after Publication, no Examination will be allowed but by special order, some special cause being shewed.

Notice must be given both of the names and dwelling-places of the persons examined, in all cases of examination.

After an Order for Publication, and that delivered to the Examiner, no witness may be examined in Court, though he were sworn before; and if any such be, his Depositions may be suppressed. *Garyes Rep.* 27, 58, 93. *Tohil.* 189, 190, 192.

No Abstract or Copy of the Depositions of any Witnesses is to be delivered till Publication be past. Neither may any Depositions be suppressed upon a bare petition onely, with References and Certificates upon it.

Where there are several Causes which are merely cross Causes between the same parties, and touching the same matter, there the Depositions of Witnesses in the several Causes may be used at the hearing of both Causes, (being heard together) without any motion.

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Where Depositions are regularly taken, they may not be suppressed by motion: but if any Depositions appear to the Court to be gotten by practice, they may by order of the Court be suppressed. Depositions taken in Chancery, may by order of the Court be made use of in any other Court. *Caryes Rep* 35, 56.

He that will examine VVitnesſes, (*in perpetuam rei memoriam*) to preſerve a teſtimony, he muſt firſt exhibit his Bill, and ſhew his title to the thing, and that the VVitnesſes to prove it are old, and not like to live long, whereby he is in danger to loſe it; and then pray a Commiſſion to ſome Gentlemen of credit in the Country to examine them, and a *Subpœna* to the parties intereſted to ſhew cauſe if they can to the contrary: and if the party intereſted being duly ſerved, within fourteen days ſhew cauſe, the Plaintiff muſt deſiſt; and if no cauſe be ſhewn, he may go on alone, if the other will not joyne with him, as he may if he will: and then fourteen days warning is to be given of the execution thereof. In this caſe the Court will appoint Commiſſioners, and give Articles to examine upon; or they may be examined in Court by an

Examiner. But here observe, that none but aged and impotent persons may be examined upon this Commission.

VWhere the Defendant takes exceptions to the proceedings in speeding the Commission, as, whether he did appear or not, and whether Oath were made before them of notice given to him of the time and place of execution thereof; in such case the Commissioners must certifie up with the Commission, the exceptions the Defendant took.

This testimony taken upon this Commission, is not to be published while the VVitneses live; but in some cases, as either by consent of the parties, or upon Oath made that either the Plaintiff hath some tryal at Law, wherein he shall need it, and that the VVitneses are not able to come to the place, or otherwise by order of Court; and then the Commission is to be opened by a Master, and to be considered of; and afterwards it may, if the party will exemplifie it, by order of this Court, be given in evidence in any other Court.

These Depositions thus taken, shall not be made use of to be given in evidence against any other but the Defendant, who

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was warned to defend it, his Heirs or Assignes, or some other claiming by or under him, by some interest which accrued to him after the Bill preferred. *Tolbt* 189, 190, 191, 192.

Where both Plaintiff and Defendant have examined what Witnesses they please, and are ready to go to hearing, there either of them must first give the other a Rule for Publication: which Rule being expired, and no cause shewn to the contrary, then Publication passeth. After which, neither party can examine Witnesses, unless it be by special order of the Court; which will not be granted without an Oath made, that the party which requireth the same, nor any of his Council, or Solicitor, have seen, read, or been made privy to any Examinations of any the Witnesses formerly examined in that cause, by either of the parties; and thereupon some good cause be shewn, either by Oath, or Certificate of Commissioners, why the party could not get his said Witnesses examined within the time limited for their examination: in which case sometimes the Court giveth liberty to examine Witnesses by a time prefixed; with this *Proviso*, that the party shall not

In the mean time see any of the said former examinations.

After Publication is had, the Plaintiff, or, if he neglect, the Defendant, may procure a day of hearing of course to be set down by his Clerk at the end of the Term, when either the Lord Chancellor or Master of the Rolls do set down Causes to be heard.

The days must be set down according to the priority of Publication; neither must any Cause be presented for hearing, the same Term that Publication passeth.

All Process to hear Judgment must be returnable six or seven days before the day of hearing, except it be in the beginning of the Term, when the time will not bear it; and the VVrit must have on the back of it the very day of hearing; at which day, if the Plaintiff do not appear, the Defendant is to be dismissed with costs. *Caryes Rep. 43.*

SECT. 6.

Our Solicitor having thus far with diligence managed his Clyents business, and brought his Cause to a hearing; the next point of his care will be to get the

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Decree drawn up; which should be done as short as with conveniency it may, and not recite the Pleadings at large, but the sum thereof briefly. And if it be made before the Master of the Rolls, or any of the Judges, it ought, being drawn, to be first signed by them, and afterwards by the Lord high Chancellor, and then it must be inrolled; which Signing and Inrolment ought to be done before the first day after the next *Michaelmas* or *Easter-Term* after the making of it.

VVhere the Decree concerns Lands or Leases, it must be entred into the Registers Docket-book, within six moneths after the making of it; otherwise it shall not prejudice the Purchaser of the Land: neither indeed shall any Decree be binding to any but those who are served with Process *ad audiendum Judicium*, or that did appear *Gratis*.

The Purchaser that comes in by Conveyance *bona fide* from the Defendant before the Bill exhibited, and that is no party by Bill or Order, shall not be bound up by any Decree. But where a man becomes a Purchaser, *pendente lite*, and without any colour of privity, or allowance of this Court, there

there it shall regularly binde him : yet in such case , if there have been any intermission of the suit, or the Court be acquainted with the Conveyance , then the Court is to give order and direction in it.

No Decree made by the Court can be crossed, altered or explained upon a bare petition onely ; and yet thereby it for some special Reasons may be stayed for a while till it can be moved in Court.

A Decree once inrolled, cannot be reversed or altered but by a Bill of Review , unless it be in case of mis-casting , where the Case is demonstrative ; and then it may be done by Order.

A Decree will bind the person of a man : for where any do refuse to obey it, the Court will imprison them till they conform. It binds also the rights and titles to Lands and Goods : for the Court by Order of Sequestration and Injunction will dispose of the possession thereof for ever to him to whom the Court judgeth the right to belong in conscience.

VVhere a Decree is to be made upon a pretence of Equity against the Judgement of another Court, that Judgement is first read ; and then the Decree is not to vacate the
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the Judgement, but to order the unreasonable party.

The Decree being thus obtained, our Solicitor may sometimes meet with stubborn and perverse people: it is most requisite therefore that he be instructed how the Court doth use to enforce Obedience to their Decrees, and to punish the breach of them; that so he may the better know which way to take to procure the Court to do the same in his Clyents behalf: and that is to be obtained thus.

First, he must serve the party with the Decree it self, under the Seal of the Court: and if he yeild not obedience thereunto, but stands obstinate, then proceed to take out all the Processees of contempt against him one after another; and the party being taken, will be straightly imprisoned, and not set at liberty till he yeild obedience to it; that is, that he perform that part of the Decree which is presently to be done, and give security to perform the other part which is to be done in the future. Also the Lord Chancellor may for his contempt fine him what he please, and afterwards the same may be estreated,

Where the Decree is for Land, and the party

party remains obstinate or wilful after his imprisonment, the Court upon motion will grant an Injunction for the possession: and this being disobeyed after it is served, and Oath made thereof, the Court in that case will grant a Commission to some Justices; and if need be, a Writ of Assistance to the Sheriff to put him in possession. *Caryes Reports* 23, 34 36, 37. *Totbil* 56, & 57.

Where this Injunction is granted for possession of the Land, and the party sits out all Process of contempt, and cannot be found by the Sergeant at Arms, or make a rescue; there the Court being by Oath upon motion informed thereof, will grant a Sequestration of the Land. *Totbil* 107. And this Sequestration is granted sometimes as well of the Goods, as of the Profits of a mans Land; and that for his wilfulness in standing out in contempt, and disobedience to the Court, as well where it is for discharge and payment of Debts and Duties, as where the Decree is for payment of a sum of money. *Totbil* 175, 176.

SECT. 7.

IN case of contempts upon force or ill words, used upon any that serveth Processes,

cess, or other words of scandal to the Court; if they be proved by Affidavit, the party forthwith upon motion will be committed, if the words spoken deserve it.

For other contempts against the Orders of the Court, take in short as followeth. First, an Attachment goes forth upon Affidavit made of the contempt; then the party being taken, is to be examined upon Interrogatories; which is many times upon motion referred to one of the Masters of the Chancery.

The Contempter coming in *Gratis*, or upon Process, should give notice to the Clerk of the other side of his appearance: and if there be not Interrogatories put in within eight days, or being examined, if no reference be of the Examination, nor Commission taken out of the other side, or Witnesses examined to prove the contempt in a moneth; the Contempter shall be discharged, and shall recover costs, to be taxed by a Master without any motion. But if after he have appeared upon the contempt, he depart unexamined, he must stand committed till he be examined and cleared; and if it be found, he must clear it, and pay costs ere he be discharged.

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Such as stand committed for contempts upon Attachments, or Commissions of Rebellion, must enter into bond to attend from day to day, and not to depart without leave of the Court. *Caryes Rep: 9, 44, 70, 71, 82.*

Imprisonments upon contempts for matters past, may be discharged *ex gratia*, after sufficient imprisonment; or it may be otherwise dispensed withal. But where the imprisonment is for non-performance of any Order of the Court in force, then the person so in contempt ought not to be discharged except he first obey; onely the Court may dispense with the contempt for a time.

After all this, and a Decree performed, or else the party in prison for non-performance, as aforesaid; yet ought our Solicitor to understand, that his Clyent for all this may be a great way off from an end: for upon performance and obedience to the Decree, a Bill of Review may be brought. At the putting in of which, the party that prefers it must enter into a Recognizance with sureties for the satisfying of costs and damages for the delay, if it be found against him.

V Where a Cause is dismissed upon full hear-

hearing, and the dismissal signed and enrolled, it cannot be retained again but by a Bill of Review; and that in some special cases too: for

No Bill of Review is grantable but upon error in Law, appearing in the body of the Decree it self, without averment or further examination of any matter or fact which might have been had at the time of the Decree, unless he shew some new matter which hath risen in time after the Decree, whereof the Plaintiff could not have advantage before; and then upon Oath made that there is a discovery of such new matter, this Bill (by the leave of the Court) may be exhibited, giving security as before.

Where the Decree is to yeild the possession of Land, deliver VVrieings, or to pay money, he must first perform that before a Review: but if the Decree be to extinguish a Right, convey Land, release a Debt, acknowledge satisfaction, or to cancel Records or Evidences, or the like, it may be stayed by the Courts order till the Bill of Review be determined.

No witnesses which either were or might have been examined upon the former Bill, shall upon this Bill of Review be examined to any matters. *Totbil 173.* Chap.

CHAP. V.

Shewing our Solicitor several other incidents which he ought to be skilled in, and much relating to his practice.

HAVING now in the former Chapter, and the several Sections thereof, passed through the general proceedings of the Chancery upon Bills, Answers, and all other things, even to the Decree and Review thereof; there are yet some things remaining, which in many cases are not only incident, but even essential to those affairs wherein our Sollicitor ought to be particularly skilled. And the first of these is concerning Injunctions.

And this is looked upon in the general Acceptation, as a main and chief branch of the power of the Court, for that it makes stay of Proceedings at Common Law; and, as before is said, is many times granted to gain possession of Land, and so becomes subsequent to the Decree.

Where it stays proceedings at Law, in some cases it gives leave to go to tryal and judge.

judgement, but stays execution; and where the matter of Law is tryed, it bars them from judgement, as the cause may be.

On where there is a Judgement, and that executed, it will stay the money in the Sheriffs hand, after the party is arrested at Law for the money.

This Writ is commonly procured either upon some Writing or matter of Record plainly appearing, or upon a very old debt that hath long slept, Creditor and Debter being both dead: or in such cases where the Defendant doth not appear, but sits an Attachment; or if he appear, either answers not the Bill, or confelleth so much thereof as is sufficient.

Where either the Defendant is beyond the Sea, or being in the Kingdom doth absent himself, so that he cannot be served; or where upon any pretence he hath gotten time to answer; the Court doth usually in those cases, upon motion, grant an Injunction to stay suit till the Defendant doth appear.

Where a Commission is granted to take an Answer in the Country, an Injunction upon motion will be granted to stay the Defendants suit at Law (if any be) till the

Answer come in: and of this the Defendant is bound to take notice, though he be not served therewith.

Where there is a Verdict at Common Law in an Action of Debt, and a Bill be afterwards here exhibited for relief, the money must be deposited in Court before an Injunction can be obtained, unless in some cases, where some special matter in equity appears by the Defendants Answer, or in some former Decree.

Where a person priviledged in this Court is sued elsewhere, that suit may be stayed by an Injunction.

Where Timber is unjustly felled, ancient Meadow-ground plowed up, ancient Pastures that have not been plow'd up in twenty years before, or for the Maintenance of Inclosures kept in twenty years before, an Injunction is grantable according to the case.

Where an Injunction is granted to quit a possession, it is granted of Houses and Land onely, and not of a River, or fish-like thing: and it is not to be granted before the hearing of the cause, unless upon an Oath, that the Plaintiff was in possession at the time of the Bill put in; and then onely of that possession he had then and three years

years before, and at the time of the motion, and not to be extended to the possession of those from whom he claims. And this shall not hinder the Defendants suit in Law, making of a Lease, taking of a Distress, &c. And this Injunction will soon be dissolved again, if the Plaintiff delay his suit.

Where it is to stay or remove a suit by *Certiorare*, Bond must be first given that the Bill hath matter sufficient in it to bear it, and shall be proved true within fourteen days after he hath the Writ; and if it be not done in that time, after Certificate of his neglect from the Examiners, it shall be dismissed with costs, and a *Procedendo* granted.

Where the Injunction is to be obtained by motion for matter in the Answer, there the case must be put in writing to the Court.

Where it is granted upon the merit of the cause, or upon special cause in equity, it is to stand till the hearing, unless the Plaintiff delay his suit.

This Writ thus obtained, must be served either on the party himself, his Counsel, Attorney or Solicitor, &c. as the case requires; and the manner of serving is much like to that of serving a *Subpoena*.

A bare petition onely will not dissolve an Injunction; nor if it be had by motion, can it be dissolved without a motion of the adverse party.

VWherean Injunction is granted till the Answer be put in, and no order be made to continue it within fourteen days after the Answer come in; in this case it shall be dissolved upon the Registers Certificate thereof onely. And if no motion be made that Term, or at the next Geneal Seal after the Term, to continue it for insufficiency of, or matter confessed in the Answer; it is of course dissolved: so where it is to stay a suit at Common Law, and the Plaintiff doth not proceed for three years together.

Where the Injunction is disobeyed, (if you would force obedience thereunto) upon Oath made thereof all the Proceses of Contempt are to go out against him one after another; and being taken, he is to be imprisoned till he yeild obedience to it, or give security to do it. Nor is he to be heard in the principal case, till he yeild obedience in every thing to the Injunction.

Totul. 107. Caryes Rep. 112, 113.

SECT. 2.

A Nother material point is about Dismissions, and how they are to be managed and attained. Concerning which, he is to know, that this is prayed by motion, and had upon Plea to the Bill, or at the hearing of the Cause; but not after examination of Witnesses before hearing, but upon a discontinuance of prosecution, and then by motion and order.

Where the Plaintiff discontinues his Prosecution, after all the Defendants have answered by the space of two Terms, the cause is to be dismissed the third Term upon course: but after a Replication put in, it cannot be dismissed without an Order upon a motion.

Where a Cause is dismissed upon a full hearing, recorded and certified by the Lord Chancellor, it cannot be again retained, nor a new Bill admitted but where there is new matter.

Where the Bill is duely dismissed of course, or by order, no motion will be heard to retain it, till the costs assessed upon the dismissal be paid, and certified from

the Clerk on the other side that it is done.

No Dismission, or retainer upon a Dismission, will be granted on a bare petition only.

In cases of Dismission not upon a full hearing, to a new Bill this may be pleaded.

But generally for all causes of Dismission the Court will retain and dismiss it as they see cause, as daily practice and experience doth plainly manifest. See *Cary's Rep.* 346, 43, 74, 76, 110.

SECT. 3.

A Third point much and frequently incident to practice, are References to the Masters of the Court, and their Reports thereon. Which happen upon several occasions: As,

Where there is a Demurrer to the Jurisdiction of the Court, there no Reference may be had to a Master upon it, but it must be heard before the Lord Chancellor himself.

After examination of Witnesses is past, there can be no Reference had to a Master to end and determine, unless it be in case of near kin, poverty, or consent of parties.

A Reference of the State of the case is sparingly granted; unless where there is the consent of parties. The examination of Court-Rolls is to be by Reference; but there it must be by two Masters at the least.

No Reference shall be made of the insufficiency of an Answer, without Allegation of special causes. The Reports of the Masters upon References, must not exceed the order of Reference, whereby the same is referred. And after the Master hath seen the order, he usually grants out a Warrant, which is shewn unto the other side, whereby he gives notice of the time of his hearing the Cause; where the other side with their Counsel or Solicitor, or both, may as they see cause attend.

The Report it self is usually brief of what onely they finde; wherein the Master ought not to certifie his own opinion, but leave the same wholly to the judgement of the Court: and if the Cause be very doubtful, then must he set forth the special case.

No order can be had to confirm the Report, till it be first filed with the Register, under the Masters hand, and a day given to the other side for seven days at least to speak to it in Court. But where it doth not

ground a Decree, and it be positive, it doth usually stand, and process may be taken out for the performance thereof, unless the adverse party upon notice thereof do within eight days after, (if it be in Term-time) or if at the General Seals for motions, or if after them, within four days of the beginning of the next Term, file exceptions to the same. And in such case the party that so fileth exceptions, must depofite forty shillings with the Register, and a day will be set for the judgement of the Court: and if the Court do not allow the exceptions, the other shall have the forty shillings, and what more the Court shall think fit: if otherwise, the mony is to be restored.

The matters chiefly under Reference, are either insufficient Answer, matters of Account, contempt, or abuse of the Court. Where a Master upon a Reference to him reports an Answer insufficient, the Complainant may take out two *Subpana's* against the Defendant, the one for twenty shillings costs, and the other to make a better Answer,

S E C T. 4.

THere are many occasions intervening in a cause, which do require a motion to set them right: now every motion procures an Order, (now it behooves our Solicitor not to lead his Clyent into unnecessary and chargeable motions) and every Order must be drawn by the Register who sate then in Court; and took Notes thereof (when the same was pronounced) into his Book; by which, to draw up some more full remembrance of that which passed in Court. Which that it may the better be done, our Solicitor after the rising of the Court, ought to repair to the Registers Office; and there finding the Notes, and shewing them to the Register or his Clerk, to have instruction for the drawing up of the said Order for his Clyents better advantage.

Where any Order shall be made, and the Court not informed of the last material Order formerly made, no benefit shall be taken by such Orders, as being surreptitiously procured; and therefore the Register doth always mention the last former Order

Order, in the Order that he draws up at present.

An Order made out of the general Rule, must set down the special Reasons of it.

No Order shall be explained by petition, but by publick motion, both parties being heard.

No Order but final Orders and Decrees may be received to be entred after eight days after the pronouncing thereof, that day being included.

The Register is to keep Copies of the Orders he doth deliver, and he is to mark the same; which done, it is to be entred by the entring Clerk, and so brought back again to the Register for his hand to be put to it, and then it is authentick.

The Register after a hearing and reference to a Master, is to set down in the Order of Reference what was the Opinion of the Court, unless the Court do direct it to be drawn otherwise.

All Orders drawn up by the Registers, are to be entred under the Registers hand in due time; and after they are once so entred, they may not be in any manner, upon any occasion whatsoever, altered, without a special Order and direction of the Court to that purpose.

It

It was an ancient piece of practice, but I think now almost super-annuated, that the Register within ten days after the end of every Term should certify the Lord Chancellor, or Lord Keeper for the time being, what References depend in the hand of any Master, and how long they have depended; that so if any of them have depended over-long, the Court may require an account thereof from the Master, and quicken him to a speedy dispatch.

SECT. 5.

IT doth often fall out, that some persons may have right to an Estate, yet not wherewith to prosecute the same; or else may be made parties to a suit, as knowing much therein, yet have not wherewith to make either a defence or discovery: in such cases the party making Oath before a Master of his poverty, and exhibiting the same either to the Lord Chancellor or Master of the Rolls, together with a petition, they, or one of them, will admit him to sue *in forma pauperis*, and assigne him such Counsel, Six Clerk, &c. as he shall desire.

But here it is necessary for our Sollicitor

to

to know, that there are many Paupers who bring onely vexatious suits; which if he can discover, and inform the Court thereof, they shall not onely be dismiss, but punished: however such thing be made appear, the Counsel and Clerk assigned as aforesaid, may not refuse, but must attend their business, unless they shew cause to the Court why they cannot so do.

They must always have their Order of Admission with them, and first move that before any other motion: and indeed it is no hinderance at all to them; for if they have any other motion, they may make it afterward.

Where the Register findes he is not in Pauper, he shall not draw up any Order upon the second motion, but the Pauper pretended shall loose the fruit of it.

No Counsellor, Attorney, Solicitor, or Officer of the Court appointed to be for a Pauper by the Court, is to take any thing of, or contract for any thing with him, and the Pauper that can be proved so to have given or contracted, is to be dispaupered for ever.

If a Pauper sell or contract for his suit, or any part of it, his Bill shall be dismissed, and never after retained. No

No Proceſs of contempt ſhall go out for a Pauper, until it be ſigned by the Six Clerk who dealeth for him; and he muſt ſee there be cauſe for it.

In all Offices where he hath any occaſion to paſs any thing, he muſt ſtill ſhew his Admiſſion.

Touching Petitions: for the avoiding the multitude of frivolous ones, drawn by perſons who are altogether ignorant of the practice and courſe of the Court, and the true ſtate of the Petitioners buſineſs, it were to be wiſhed that none but able Solicitors, ſuch as are deſcribed before, both for Learning and Parts; and not every broken Fellow, that can ſcarce write his name, be allowed by the Court to practice, as is before mentioned, *Pag. 27.*

SECT. 6.

A Nother thing fit for our Solicitor to know, is, the matter of Affidavits, and how they are to be made, that they may be effectual. You muſt know then, that Affidavits are moſt generally made before Maſters of the Chancery: but where it is for the ſerving of a *Subpœna*, they are ſometimes taken and certified by others. An

An Affidavit may not be taken against an Affidavit: for if it be, the latter is not to be used.

An Affidavit ought not to be taken tending to the proof or disproof of the matter in question; nor may any such matter be admitted to be colourably inserted into an Oath made of the serving of Process. *Carr's Rep.* 63, 69, 81, 82, 84, 85, 98, 99, 103.

There is also another point fit for our Solicitors knowledge: for many times there may be some one belonging to the Court, who is thereby a privileged person, by which means he cannot be sued for debt. In such case, and against such a person so privileged, a Declaration for debt, or any other thing whereof the Court holdeth Plea, is to be delivered to one of the Six Clerks, whom the Plaintiff maketh as his Attorney; and he thereupon giveth a day (as is commonly termed, which is a week, viz. the whole next Return) to the Defendant to answer; which day entered into the Six Clerks Costs-book, (in this manner, *Roberts against Johnson*) a day is given from the day of St. Michael in one moneth, in a Plea of Privilege.

Day

Day being thus given, the Declaration under the Attorneys hand is sent over to the Petty-bag by one of the said Attorneys Clerks: which Declaration is briefly entred by one of the Clerks there, and likewise the day that is given to the Defendant to answer in a Roll there, which is called *Rotulus rememorationis Parvæ Bagæ*: at which day, by the course of the Common Law, if the Defendant plead not, he is fore-judged the Court. But of late the course hath been to allow the Defendant a day of Impar-
lance: that is, day till the next Return after the Return given him to answer; which is in this manner.

The Defendant retaineth one or other of the Six Clerks, who imparleth for him; which is done in the Six Clerks Costs-book, (in this manner, *Roberts against Johnson, Imparlance until the morrow of All-souls*) at which day it is sent over into the Petty-bag, to be entred into the aforesaid Roll, next under the said Declaration.

The said day of Imparlance being past, another day, viz. commonly five days in a week, (which is commonly called the Peremptory day) is given by the Plaintiffs Attorney, and entred into the Petty-bag,

as

as aforesaid, to the Defendant to plead, or else Judgement is to be entred against him.

If the Defendant plead, his Plea is delivered by his Attorney to the Plaintiffs Attorney; and then if the Plaintiff will proceed to a Tryal, he is to joyn up the Issue, (if he may, for in some cases he cannot) or else the Plaintiff is to reply, and give the Defendant a day, viz. a whole Term to joyn up Issue, which is given and entred as the day to answer; and if the Defendant by that day joyns not up the Issue, Judgement is entred up by *Nil dicit*. Here note, that after a Peremptory day given, the Defendant cannot pray Oyer of the Bond and Condition, or such-like, as of late hath been used for meer delay: but if the Issue be joyned up, either by the Plaintiff or Defendant, then is the Record made up, and the same with a *Venire facias* is sent into the Kings Bench to be tryed, as an Action there at Issue; and upon Judgement there, execution is thereupon there awarded.

But if the Defendant refuse or neglect to imparle at the day given him to answer or plead (for he may plead if he will) at that day, then is Judgement entred against him, and execution is awarded.

Upon

Upon Judgement either by default or *Nihil dicit*, some of these Writs of Execution are awarded. If for Debt, the Plaintiff may have an *Elegit*, by *Westminst. 2. Cap. 18.* or else a *Levari facias*, or *Fieri facias*; and if the Plaintiff cannot levy his Debt and Damages, then he shall have a *Capias ad satisfaciendum*, either for all, or so much as resteth unsatisfied.

The Judgement being satisfied, the Plaintiff by himself or his Attorney (if the Defendant desire it) doth acknowledge satisfaction upon the Judgement in the Petty-bag-Office.

It is to be noted, that whatsoever day is given by any of the Six Clerks, and by them entred in their Book, is yet worth nothing if the same be not entred in the Petty-bag.

This is the course used against a person that is priviledged by a Forraimer: but if a Forraimer be indebted to a priviledged person, or incur a suit, then you must observe this course that followeth.

The Defendant being arrested by an Attachment of Priviledge, at the suit of a priviledged person, as aforesaid, must retain one of the Six Clerks to his Attorney, and must put in Bayl to the Plaintiffs Action,

H

according

according to the course of the Court ; which is, to appear from day to day until the Plea be determined, to satisfy the Plaintiff all such sums of money as the Plaintiff shall recover against him by reason of this suit : then the privileged man putteth in his Declaration, and thereupon the proceedings are the very same as before against the privileged man.

By the course of the Court the Defendant is to put in four Subsidy-men, or sufficient sureties, (be the Action never so small) as appears by *Archibald and Burials Case*, 23 *Eliz.* wherein the Defendant is bound in 400*l.* the sum of the Action, and every surety in a hundred pounds.

If Judgement be given for a privileged person in this Court, he may if he will take out Execution as before : but if he will not, then he may take out a *Scire facias* against the Defendant and his Manucaptors upon the Bayl : whereupon if Judgement be upon the said *Scire facias* in the Chancery, then Execution is there awarded ; but if upon Issue joyned and sent into the Kings Bench, and upon Tryal there, Judgement be given, then is Execution there awarded : and upon satisfaction of the Debt and Damages,

images, the Bayl is to be discharged upon the acknowledgement of satisfaction, as before is mentioned against the priviledged person.

If either the Plaintiff or Defendant upon Declaration of Priviledge or *Seire facias* demur in Chancery, the Demurrer being joyned, a day is set down by the Lord Chancellour or Lord Keeper for the arguing thereof before him. And if upon the Argument it fall out to be a *Respondeas ouster*, then Judgement is entred thereupon: and if it be against the Defendant, then Execution is awarded; and if against the Plaintiff, then it is that *Nil capiat per Billam*, that he take nothing by his Writ or Declaration.

But if it be a *Respondeas ultra*, then is the Defendant to pay costs, and a day given for him to plead peremptorily, or Judgement to be entred.

Thus have I quite gone through the whole practick part wherein our Solicitor ought to be versed: I shall in the next place give you a Table of Fees; which in regard he may in dealing for Clyents have occasions for frequent disbursements, I think it very necessary: which are in short these, and shall make one entire Section, and the last of this Chapter.

SECT. 7.

A Table of Fees.

For all first, second, or other Copies of all Bills, Answers, and other Pleadings whatsoever; as also of all Certificates and Examinations, made or taken by verrue of any Commission out of this Court, and of Interrogatories therewith returned; and also of all Declarations or Proceedings by English Bill, or according to the course of the Common Law; and for Copies of Records, Rolls or Evidences brought in to be copyed, or remaining in the said Court; for every sheet of paper containing fifteen lines ————— } 15 s. 4.

For the inrolling of all Warrants, whereby any Patents, Commissions, Licenses, Pardons, Leases, or other Grants whatsoever, do pass by and under the Great Seal, after the rate of every Skin so passing the Great Seal ————— } 00-00-08

For the inrolling of all Warrants for Commissions of the Peace or Gaol-delivery, for a liberty for Oyer and Terminer, for Pyracies, for the preservation of the Game of Swans, and for Commissions for enquiry sued out for the benefit of any private person; for every of the said Commissions — } 00-02-00

For the inrolling of all Warrants for Commissions of the Peace or Gaol-delivery, for a liberty for Oyer and Terminer, for Pyracies, for the preservation of the Game of Swans, and for Commissions for enquiry sued out for the benefit of any private person; for every of the said Commissions — } 00-01-08

For the inrolling of all Warrants
for all Commissions of Appeal, and
for the Admiralty, for every one of
them ————— } l. s. d.
00-00-04

For the inrolment of every War-
rant, for every ordinary License or
Pardon of Alienation ————— } 00-03-04

But if the same be of more then
ordinary length, then according to
the length, after the rate of ten
shillings the Skin, and not above — } 00-10-00

For inrolling all Warrants for all
Commissions in the nature of Writs
of *Diem clausit extremum*, *Mandamus*,
Idiota probanda, *Lunatic' inquirend'*
Melius inquirend', for every of them — } 00-03-04

For inrolling the Warrants for
every Patent or Grant of the Custo-
dy of any Ward ————— } 00-08-08

But this of Wards I suppose now to be
of little use, in regard all manner of Ward-
ships are quite taken off, by a Statute made
in the 13 of King Charles 2.

For inrolling the Warrant for eve-
ry Presentation, Donation or Revoca-
tion to any Rectory, Vicaridge, Dean-
ry, Archdeaconry, Cancellorship,
Treasurership, or Dignity to any Me-
tropolitical, Cathedral or Collegiate
Church, or for any Cannonship or
Prebend in any of the said Churches;
or for the Mastership in any Hospi- } 00-03-04

ral or Ecclesiastical Living, or for
the Grant of any Presentation or Pre-
sentations, *pro unica vel pluribus vi-*
cibus thereunto —————

For the inrolling of the Warrants
for every *Mandamus ad Installand* —————

For the inrolling of all Warrants
for all Wine Licenses, for every life —————

Or such Fee not exceeding, that
proportion as by the Chancellor shall
be set down: though formerly they
paid if it were granted for three lives
but —————

For the inrolling Warrants for e-
very Pardon of Outlary —————

For inrolling Warrants for every
Denization or Commission of Ban-
rupts —————

For writing of every Exemplifica-
tion, as well of Records in the Tower,
as of any Record whatsoever, after the
rate of every Skin —————

The Six Clerks Fee of every Cly-
ent for every Term whilst his cause
dependeth undetermined by Decree
or by Dismission, the Termly Fee of —————

And so if there be twenty Plaintiffs in one
Bill, they all pay but one Fee for one Term.

But for every three Defendants,
reckoning the husband and wife but
for one person, there is due for their
first appearance —————

And

And upon the first appearance, if every Defendant appears severally by himself, he is to pay the Fee of three shillings four pence; but every Term afterwards, during the continuance of the Cause, there is onely the Fee of three shillings four pence the Term to be paid for all the Defendants that did appear in any Term or Vacation in the same Cause.

l. s. d.

For a VVrit of Subpœna to answer — 00-02-06.
If there be three in the VVrit, you }
pay more — 00-00-06.

For an Attachment — 00-02-10.
For breaking it up with the Sheriff, }
and his Warrant thereon — 00-02-04.

For the return of the Attachment — 00-00-04.

For a Proclamation of Rebellion — 00-02-10.

Breaking it up, and Warrant — 00-02-04.

The Return — 00-00-04.

For a Commission of Rebellion — 00-18-02.

For the inrolment of every Liberate }
and Allocate — 00-03-04

The Rule which the Plaintiff gives }
the Defendant to make answer by a }
day when the Defendant appears — 00-00-04.

For each Rule for Publication after }
examination of Witnesses — 00-00-04.

For entring them with the Register, }
for each — 00-00-04.

The Defendants appearance — 00-04-00.

In which is included the Clerks Fee
for the Term.

For the Oath made that the answer *l. s. d.*
is true ————— } 00-01-00.

And so for every Defendant, if they be
never so many.

For a Commission to take an Answer
in the Country by *Dedimus Potestatem* } 00-07-10.

Besides the ingrossing of the Bill,
which is included in it, every sheet — } 00-00-06.

For a *Subpoena* for costs, where the
Bill is not put in by the Complai- } 00-02-06.
nant within the time limited —

For a Bill of costs, & the entry of it — 00-02-04.

For a Joynr-commission to examine
Witnesses in the Country — } 00-07-10.

The Plaintiff pays the Defendant — 00-06-03.

For the examination of every Wit-
ness here before the Examiners — } 00-02-06.

For the Oath of every Witness that
is to be examined — } 00-01-00.

For the Copies of Depositions re-
turnable by Commission — } 00-00-08.

For Copies of Depositions taken in
the Examiners Office, for each sheet — } 00-01-00.

For the drawing up of an Order up-
on motion to the Register, for the first
side — } 00-03-00.

For every other side — 00-01-06.

For entring of the same Order, eve-
ry side — } 00-00-06.

Fees of an Injunction in all — 01-02-06.

If it be granted by the Master of the
Rolls, then you pay two shillings more.

For a *Subpoena* to rejoin — 00-02-06.

For a *Subpoena ad audiendum Judi-
cium* — } 00-02-06.

For

For a *Subpœna super ordinem* to shew cause } l. s. d.
00-07-02.

For a *Subpœna ducens tecum* ——— } 00-07-02.

For a *Subpœna de executione ordinis* ——— } 01-00-00.

For the Copy of Replication, Rejoinder, Sur-rejoinder, Rebater, and Surrebater, as for Bill and Answer.

Fees for a Decretal Order drawing up, as in another Order; only for the word *Decree* you must pay more ——— } 00-18-06.

For every Writ of execution of any Order ——— } 00-06-08.

For drawing and inrolling every Decree and Dismission respectively ——— } 00-03-04.

For every Writ of Execution upon any Decree, after the rate of every Skin ——— } 01-06-08.

For writing of every Sheriffs Patent, Writ of Assistance, Writ of Discharge, Commission to take the Sheriffs Oaths, the Warrant of Attorney, and writing the two Oaths, and the Clerks Fee ——— } 01-02-08.

For every *Supersedeas* for the discharge of any Commission, or other Writ made in the Six Clerks Office ——— } 00-06-08.

For every *Supersedeas* of Priviledge ——— 00-06-08.

For every special *Certiorare*, or *Procedendo*, *Corpus cum cau'a*, or *Habeas Corpus* ——— } 00-06-08.

For every Bayl upon every Writ of *Corpus cum causa*, or nature of priviledge ——— } 00-02-09.

For all manner of *Certiorare's* and *Procedendo's* of course ——— } 00-02-09.

For

For every Recognizance or Bond made in Court	2 l. s. d.
For every Oath before a Master	00-02-00.
For every Report, though never so small, ten shillings, and the Clerk five shillings; and if it be longer, then more.	00-01-00.
For filing every Affidavit	00-00-08.
For filing every Report, the like.	
For the Solicitors Termly Fee	00-06-08.
And for every attendance in Court on References	00-06-08.

CHAP. VI.

By way of Advice and Corollary.

THUS have I with brevity, plainness and truth, run over all the most material and effectual things which are required from a Solicitor, or indeed from any belonging to the Court. I suppose I shall not need to say any thing of Solicitation in the Courts of Kings Bench and Common Pleas at *Westminster*, neither of the Exchequer-proceedings by English Bill, they being in effect one and the same with the Chancery, onely a little more chargeable. The Office of Pleas agrees with the
Kings

Kings Bench; and all other Offices belonging to that Court, may rather be looked upon as pertaining to the Kings Revenue, then matter of Record between private subjects. The Hustings of *London* are of so quick dispatch, and little charge, that the very meanest persons in the City understand the practice thereof, though sometimes there are some delays put upon them by the Practizers, who keep the mystery of their dealing within their Walls. In short, I suppose Solicitation is either onely or chiefly needful in Chancery, where always the Causes are of great weight, importance and intricacy; and not in Courts of Law, where the Attornies and their Clerks are able to manage and go through much more business then they have, their Proceedings being certain and concise, and tyed to stricter Rules, then the Chancery, being a Court of Equity, can be. But if our Solicitor will stoop to those smaller Courts, let him know, all that he hath to do there, is but to be able to breviate his Clyents Cause, fit to instruct Counsel: for in all other things he is but a servant to the Attorney. Yet would I not have him either negligent or ignorant; but, as leisure
shall

shall serve, still to have an eye to the practice of all Courts: for by that means at one time or other he shall be enabled either to serve his friend or Clyent. And though by practice he cannot assist, yet by his knowledge he may advise what may be the safest way to tread in. So shall he merit the praises of a knowing and industrious person; making good that of Cicero in his first Book *de Officiis*, to wit, *Nulla vite pars, neq; publicis, neq; privatis, neq; forensibus, neq; domesticis in rebus, neq; si tecum quid agas, neq; si cum altero contrahas, vacare officio potest: in eoq; excolendo sita est vite honestas omnis, & in negligendo turpitudine.* And in another place of the same Book: *Præclare scriptum est à Platone, non nobis solum nati sumus, ortusq; nostri partem patriæ vendicat partem amici. Atq; ut placeat Stoicis, quæ in terris gignuntur ad hominum usum omnia creari, homines autem hominum causa esse procreatos, ut ipsi inter se alii aliis prodesse possint. In hoc Naturam debemus sequi ducem & communes utilitates asserre in media commutatione officiorum, dando, accipiendo, tum artibus, tum opera, tum facultatibus devincire hominum inter homines societatem.* “It was most excellently
 “written

written by the divine Plato, (saith he)
 that we were not born for our selves
 onely: for of our being, our Country
 chalengeth one part, and another our
 Friends. And as the Stoicks said, that
 all things that were bred by the earth,
 were brought forth for the use of man:
 so men were born for the sake of one a-
 nother, that one might help and be pro-
 fitable one to another. And herein in-
 deed we should follow our great Com-
 manders Nature, by giving and recei-
 ving, to do common good, by all the arts,
 ways, means and endeavours that they
 can possibly finde to oblige and tye men
 together one to another in a civil society,
 or bond of friendship. But every man
 is not fit for this; *ex quovis ligno non fit Mer-*
curius: therefore it is fit that none should
 meddle in Affairs belonging to Law, but
 such as have sound discerning Judgements,
 and know what they go about; lest they be-
 come not onely punishable, but ridicu-
 lous. As it once happened to *Megabyzes*
 the Persian, a man otherwise of great repu-
 tation and valour, who having upon a time
 entred into the Lodging where the famous
 Painter *Apelles* did ply and practice his
 Art,

Art, began to discourse touching the same; and would needs give him to understand, that he knew the nature and secrets thereof: to whom *Apelles*, as being a wise and well-conditioned man, thus answered: Truly, *Megabyzes*, before I heard you speak, I held you for a discreet man; for your silence did grace your brave apparel; but since ye have wedded to talk of my trade, trust me not if the very smallest Boy here that brayeth the Oker, will not mock at, and flout you for your labour. Which may teach every man to keep himself within the compass of his Calling, and not every foolish Fellow to undertake so weighty a profession as that of a good Solicitor ought to be. This was inculcated by the Poets, when they feign that their gods do content themselves each within his own sphere; *Mars* medleth with War, *Minerva* with Arts, *Mercury* with Eloquence, *Cupid* with Love, *Neptune* with the Sea, *Pluto* with Hell, *Jupiter* with Heaven. Hence we may gather, that all things do not besit all men: The horse is fit for riding and running, the Ox for labouring the ground. Yet there are a sort of men (and I wish they were not) who without leaving any part of their idleness and vices, would

would be as wise as the Philosophers, that have both night and day studied so much. But in these, and such other Occurrants which at the present cannot be helped, let us take occasion to be more watchful and wary, lest we become one of those that forget to carry our selves discreetly; and while we blame others, run into the same fault themselves.

An APPENDIX.

Because of those many clamours which are frequently and industriously raised against the Court, by persons no doubt no way concerned, and who have no occasion of such rude complaints further then to scandalize the Government; I have presumed to do the most Honourable Household the right and justice (besides what is due to the strict commands of our Sovereign for the execution of the Laws against all persons how nearly soever attending on him) as to give an account how, and what proceedings may be had against them, without incurring any danger or trouble.

Persons that have Protections from the Law, have them either *ex Officio*, or *ex favore*.

Persons by Office are such as relate by service to the King, Queen, and Royal family; all who are menial servants to Peers, and to members of Parliament, and all Privy-Counsellors.

Per-

Persons by favour, are such as having no relation by service, are yet out of respect, friendship or allyance, protected by any person enabled to give a Protection; or else have a Protection-Royal.

Leave is to be gotten against Kings servants below stairs, from the Green-cloth. If they be above stairs, either from the Lord-Chamberlain or Groom of the Stool. If they be Gentlemen-pensioners, the Captain of their Band is to be petitioned. If they be Yeomen of the Guard, from their Captain leave is to be obtained. If they be of the Life-guard, the Lord Gerard is to be sought after. If Souldiers, their severall Colonels and Captains.

Where note, all these are to be sued to for leave by Petition: upon the delivery and reading whereof, the usual course is to summon the party complained against to appear and shew cause why he doth not or ought not pay the Petitioner. If he can shew no cause, leave is straight given: but if he submit, then usually the person of honour who might give leave, moderates the matter between the Petitioner and the party complained against; and so settles some way of payment or satisfaction, either out of their estates, pay, wages, or otherwise, as shall be thought most meet. To which Order of moderation, if the Debtor will not submit, the Petitioner straightway shall have leave to arrest him: which leave is to be signified in writing under hand; and being delivered to an Officer, is a good warrant to him to proceed against the said person according to Law.

All other Protections must be sought to be waved in like manner by petition to the Lord, or other honorable person who gave the same.

This is not to be done without charge, though there be no certainty in the charge; but each may give or receive ad libitum.

FINIS.

